

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF &  
APPENDIX**





76-6132

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

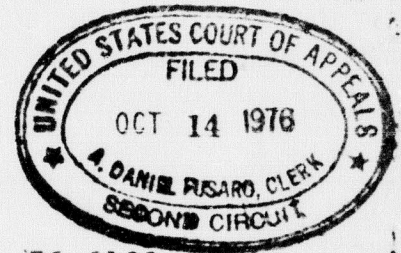
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JUAN TOMAS DIAZ-CHANG,

Plaintiff,

-against-

MAURICE F. KILEY, District Director,  
Immigration and Naturalization Service,

Defendant.  
-----x



76-6132

B  
P/S

APPELLANT'S BRIEF + Appendix

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Of Counsel

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----x  
JUAN TOMAS DIAZ-CHANG, :

Plaintiff-Appellant, :

Docket No.  
76-6132

-against- :

MARUICE F. KILEY, District Director, U.S. :  
Immigration and Naturalization Service, :

Defendant-Appellee. :

-----x

APPELLANT'S BRIEF AND APPENDIX

STATEMENT OF THE CASE

Pursuant to 28 U.S.C. Section 2201 and 5 U.S.C. Section 702 the Plaintiff-Appellant Juan Tomas Diaz-Chang (hereinafter referred to as Diaz) filed an action for declaratory judgment and motion for preliminary injunction to review the denial by Defendant-Appellee District Director of his application for a stay of deportation pending a motion to reopen his deportation proceedings made before a Special Inquiry Officer of the Immigration and Naturalization Service to enjoin the Defendant-Appellee from deporting him pending the hearing on the preliminary injunction. A hearing was held on the motion on August 19, 1976 in the United States District Court, Southern District of New York before Judge Ward. The Judge issued an order denying the motion



for preliminary injunction and dismissing the action for declaratory judgment. Plaintiff-Appellant Diaz appealed the Judge's order pursuant to 28 U.S.C. Section 1292(a).

STATEMENT OF THE FACTS

Plaintiff-Appellant Diaz is a native and citizen of Ecuador. He was admitted into the United States as a non-immigrant visitor for pleasure on April 1, 1971. He was authorized to remain in this country until October 16, 1971 and thereafter overstayed his leave. On February 8, 1976 Mr. Diaz was arrested and taken into custody by agents of the Immigration and Naturalization Service as a result of a search conducted on the premises where he was employed. A number of other employees were arrested and taken into custody during that same search including five legal residents of the United States. Plaintiff-Appellant Diaz was questioned by agents of the Immigration and Naturalization Service at 20 West Broadway, New York, New York, without the presence of counsel. During that questioning he made incriminatory statements. On February 9, 1976 while in custody at the Federal Detention Facility at Brooklyn, New York, Plaintiff-Appellant Diaz was served with an order to show cause why he should not be deported from the United States pursuant to Section 241(a)(2) of the Immigration and Nationality Act, 8 U.S.C. Section 1251(a)(2) as a non-immigrant who had remained in the United States longer than authorized.



On February 10, 1976 Plaintiff-Appellant Diaz appeared at a deportation hearing held at the Federal Detention Center in Brooklyn, New York. He was represented by counsel with whom he had a chance to consult only briefly, however, prior to the hearing. Plaintiff-Appellant was found deportable and ordered to leave the United States on or before March 26, 1976. On March 23, 1976 Plaintiff-Appellant Diaz, by his counsel, made an application to the District Direction to extend his voluntary departure date in order for him to make a motion to reopen his deportation proceedings. As a result of investigation, Plaintiff-Appellant had cause to believe that the search which resulted in his arrest was legally deficient under the standards of the Fourth Amendment of the United States Constitution. Plaintiff-Appellant's application was denied by the District Direction and on March 26, 1976 Plaintiff-Appellant Diaz submitted a motion to reopen his deportation proceedings and simultaneously a request to the District Director to stay his deportation pursuant to the determination of his motion. The application for a stay of his deportation was denied by the District Director.

On July 15, 1976 Plaintiff-Appellant Diaz caused to be issued an order to show cause why his deportation should not be stayed pending a hearing upon his motion for a preliminary injunction and action for a declaratory judgment that the District Director acted in abuse of his discretion in denying Plaintiff-Appellant's motion to stay his deportation.



On August 19, 1976 a hearing was had in the United States District Court, Southern District, before Judge Ward on Plaintiff-Appellant's motion for preliminary injunction and an action for declaratory judgment. The Judge issued an order denying the motion and dismissing the action. Plaintiff-Appellant thereafter filed an appeal from the Judge's order in the United States Court of Appeals for the Second Circuit.

STATEMENT OF THE ISSUES PRESENTED

WHETHER THE DISTRICT COURT JUDGE ERRED IN HIS FINDING THAT PLAINTIFF-APPELLANT HAD NO STANDING TO CHALLENGE THE SEARCH IN WHICH HE WAS ARRESTED.

WHETHER THERE WAS A WAIVER OF PLAINTIFF-APPELLANT'S RIGHT TO A HEARING AS PROVIDED BY 8 C.F.R. 242.22.

WHETHER PLAINTIFF-APPELLANT WAIVED HIS RIGHT TO RAISE THE ISSUE OF THE SEARCH IN WHICH HE WAS ARRESTED.

WHETHER DEFENDANT-APPELLEE IN ARRESTING PLAINTIFF-APPELLANT AS A RESULT OF A SEARCH BASED ON A WARRANT ISSUED WITHOUT PROBABLE CAUSE VIOLATED PLAINTIFF-APPELLANT'S CONSTITUTIONAL RIGHTS UNDER THE FOURTH AMENDMENT TO THE U.S. CONSTITUTION.

ARGUMENTS

(1) Standing

In his order denying Plaintiff-Appellant's motion for preliminary injunction and dismissing the action for declaratory



judgment the District Court Judge held that Plaintiff-Appellant had no standing to challenge the validity of the search in which he was arrested on February 8, 1976. The District Court Judge held that only the employer whose premises were searched would have such standing. Plaintiff-Appellant contends that under the facts in his case he falls within the ambit of persons who may challenge a search such as the one which resulted in his arrest. Under Jones v. United States, 362 U.S. 257 (1960), the United States Supreme Court held that anyone legitimately on the premises where a search occurs may challenge its legality when its fruits are proposed to be used against him. The cases before Jones required a more stringent proprietary interest in the premises searched in order to challenge the search, U.S. v. Conscente, 63 F. 2d 811 (Second Circuit 1933), Connolly v. Medalie, 58 F.2d 629 (Second Circuit 1932). Jones did away with such proprietary requirements and permitted anyone on the premises with the permission of the owner, and this would include employees, standing to challenge a search in which they were arrested.

The recent case of U.S. v. Karathanos decided by this Court on February 2, 1976 upheld the District Court finding that the search in question in an immigration matter did not meet the requirements of the Fourth Amendment. In that case the Court held that the standards must be upheld in testing the warrant on which the search was based regardless of the fact that



the subject of the search were aliens. It is submitted that the fact that the Plaintiff-Appellant is an alien should in no way cause a dilution of the standards set in cases such as Jones. Plaintiff-Appellant was on the premises searched with the permission of the owner, his employer. Plaintiff-Appellant was arrested as a result of that search and statements which he made which resulted in subsequent deportation hearings were obtained as a direct result of the search challenged.

(2) Waiver

The United States Supreme Court in the case of Johnson v. Zerbst, 304 U.S. 458 (1938) has held that it would indulge every reasonable presumption against the waiver of fundamental Constitutional rights and set down the further requirement that a waiver would not be made out unless there could be shown an intentional relinquishment or abandonment of a known right or privilege and that consent could not be inferred from submission to authority. Under standards set out in Johnson v. Zerbst Plaintiff-Appellant submits that he did not waive his right to a hearing as specified in a C.F.R. 242.22, that is a hearing within no less than ten days from the time respondent is served with the order to show cause. It was correctly pointed out by the Defendant-Appellee that Plaintiff-Appellant signed the release on the back of the order to show cause form with which he was served which release permitted an expedited hearing. However, consider-



ing the circumstances in which that took place Plaintiff-Appellant contends that there was no knowing waiver of the substitute right to have adequate time to prepare for such hearing.

Plaintiff-Appellant was not represented by counsel when he was served with the order to show cause on February 9, 1976. Further, he was served with the order to show cause while in the custody of the Defendant-Appellee at the Federal Detention Facility in Brooklyn, New York. In an environment of fear and confusion Plaintiff-Appellant may well have felt that he had no choice but to sign papers that were put before him. Plaintiff-Appellant had a deportation hearing on February 10, 1976. He was represented by counsel at that hearing, however, he had at best only a brief time to consult with that counsel. In an affidavit accompanying the action for declaratory judgment, Plaintiff-Appellant stated that he was not aware that he could challenge the search in which he was arrested and further stated that had he been aware of this he would have raised that issue at the deportation hearing and requested that the deportation hearing be reopened in order that he might raise that issue. The search in which Plaintiff-Appellant was arrested resulted in the arrest of another respondent, Eric Barnett. Mr. Barnett was accorded the opportunity and did challenge the search. The case is currently pending before the Board of Immigration Appeals. Plaintiff-Appellant's motion to reopen his deportation proceeding is also currently pending before the Board of Immigration Appeals.



(3) Validity of Search

Plaintiff-Appellant Diaz was illegally arrested pursuant to an illegal search because the search warrant which lead to his arrest was invalid in that the affidavit in support of its issues did not provide probable cause to believe that a federal crime had been or was being committed in the premises to be served. The search of Lundy's Restaurant, the premises upon which Plaintiff-Appellant was arrested was authorized by a warrant issued pursuant to Rule 41 of the Federal Rules of Criminal Procedure. The Rule 41 authorizes the issuance of the search warrant only to discover evidence of, or the means for, a federal crime.

"Statutes authorizing search warrants must be strictly construed."

(Perry v. United States, 14  
F.2d 88 [9th Circuit 1926])

However, the affidavit and warrant neither alleged nor established probable cause to believe that federal crimes were being committed at the premises searched. Rule 41(b) provides that:

"A warrant may be issued under this rule to search for and seize any (1) property that constitutes evidence of a condition of a criminal offense; (2) contraband, the fruits of crime, for things otherwise criminally possessed; or (3) property designed or intended the use for which is or has been used as a means of committing a criminal offense."

Thus Rule 41, on its face, is directed to criminal offenses and authorizes the issue of search warrants only upon the



probable cause that a federal crime is being or has been committed. Statutes authorizing search warrants must be strictly construed. In re 32 East 67th Street, 96 F.2d 153 (Second Circuit 1938). In this case the affidavit did not allege that a crime, or evidence thereof was being or had been committed upon the premises to be searched. The affidavit claimed only that:

"A number of aliens who are not lawfully entitled to reside within the United States and who are subject to interrogation and arrest pursuant to Title 8, United States Code, Section 1357(a)(1) and Section 1357(a)(2) are employed at and present within the premises known and operated as Lundy's Restaurant."

This allegation is not sufficient to make out the commission of a federal crime. The mere assertion that certain aliens may be here illegally does not permit the drawing of inference that a crime has been committed. This point was recognized by the United States Court of Appeals for the Second Circuit in U.S. v. Karathanos, 75-1322 decided February 2, 1976, slip opinion p. 1713. In that case a search was conducted pursuant to a warrant based upon an affidavit which stated that the premises to be searched contained aliens who had violated 8 U.S.C., Section 1325, which makes it a crime to enter the United States in certain ways. The affidavit contained statements to the effect that "illegal aliens" were present upon the premises to be searched. The Court observed that:



"In the absence of any facts or circumstances regarding the matter of alien entry, the mere assertion that aliens are illegal would not be sufficient to support an inference of violation of Section 1325. Since the alien may well have become deportable because of conduct prior to or after entry..."

With regard to the named employees, the affiant's informant is alleged to have stated:

"He knew them to be illegally within the United States because of conversations that he had with each of them, during which conversation he learned that they were illegal aliens."

But that was insufficient and an impermissible basis upon which to assume that the named employees were the illegal aliens. As the Court of Appeals for the Second Circuit recognized in U.S. v. Karathanos only an allegation that the employees directly admitted that they were illegal aliens would suffice to establish the reliability of the informant's conclusion. An affidavit in support of the warrant in this case established no probable cause to believe a federal crime had been or was being committed. Therefore, since the warrant was issued without probable cause the search of the premises resulting in the arrest of Plaintiff-Appellant and thus the arrest itself was violative of the Fourth Amendment of the United States Constitution and the fruits of that search included statements made by Plaintiff-Appellant while in custody of the Defendant-Appellee must be excluded. As the



Second Circuit has recently reaffirmed:

"The exclusionary rule is a remedy to be applied whenever the search in question does not apply to Fourth Amendment standards regardless of the presence or absence of a warrant..." (U.S. v. Karathanos, supra, Slip opinion p. 1724)

Should the exclusionary rule apply to deportation proceedings? Evidence which is derived from illegal search or seizure is inadmissible in State and Federal prosecutions; Weeks v. U.S., 232 U.S. 383 (1913); Mapp v. Ohio, 367 U.S. 643 (1961); Wong Sun v. U.S., 371 U.S. 471 (1963); Brown v. Illinois, 45 L.Ed.2d 416 (1975). Plaintiff-Appellant has not discovered any case which has specifically held that the exclusionary rule applies to deportation proceedings, however, the Supreme Court has stated that: it may be assumed that evidence obtained by the (government) through an illegal search and seizure cannot be made the basis of findings in deportation proceedings; U.S. ex. rel. Bilokumsky v. Tod, 263 U.S. 149, 155 (1923), and speaking of stop and issue in that case, the Court in Illinois Migrant Council v. Pilliod, supra, observed where there is a criminal case in a deportation proceeding any evidence derived from unlawful stops would be ordered suppressed. 398 F.Supp. 897-898. The case of Avila-Gallegos v. I.N.S., 525 F.2d 666 (2d Cir., 1975), for example, is not to the contrary that the mere fact that an individual's arrest was "technically defective" does not necessarily render his (or her) "deportation proceedings" null and void. At 667.



At most, the Court in Avila-Gallegos restated the Ker-Frisbie rule: that a Court's jurisdiction over a defendant is not rendered null and void by the fact that defendant was brought within the Court's jurisdiction by an illegal arrest. See Ker v. People of the State of Illinois, 119 U.S. 436; and Frisbie v. Collins, 342 U.S. 519, or as the Supreme Court stated in Bilokumsky v. Tod, supra, 263 U.S. 149:

"Irregularities on the part of the government officials, prior to, or in connection with, the arrest would not necessarily invalidate later proceedings in all respects conformable to law." (LaFranca v. I.N.S., 413 F.2d 686 [2d Cir. 1969])

This means that a deportation proceeding in itself is not necessarily rendered invalid because respondent was illegally arrested, however, it does not mean that evidence which is the proof of an illegal arrest is admissible at such proceedings. The exclusionary rule must logically apply to deportation proceedings because the primary purpose of the rule is to deter unlawful conduct by government officers. See Brown v. Illinois, supra, 424-425.

"The rule is designed to prevent, not to repair. Its purpose is to deter -- to compel respect for the constitutional guarantee the only effective available way -- by removing the incentive to disregard it." (Id. at 425, Elkins v. United States, 364 U.S. 206, 217 [1960])

The importance of deterring the violation of the Fourth Amendment applies no less to the Immigration and Naturalization Service



agents than to other federal officials and is the most important deterrent to the kind of drag-net searches and interrogations and arrests in the hopes of discovering some illegal aliens that have been chronicled in our newspapers this year. Plaintiff-Appellant submits that his arrest and subsequent statements leading to his order of deportation are the fruits of an illegal search and thus should be suppressed.

CONCLUSION

The District Court Judge's order denying Plaintiff-Appellant's motion for a preliminary injunction and dismissing Plaintiff-Appellant's action for a declaratory judgment should be reversed.

Respectfully submitted,

LINDA ATLAS, ESQ.  
Attorney for Plaintiff-Appellant

J O I N T   A P P E N D I X

1.   Docket Entries
2.   Order to Show Cause
3.   Action for a Declaratory Judgment
4.   Defendant's Memorandum of Law
5.   Defendant's Affidavit in Opposition
6.   Judgment



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PLAINTIFFS

DEFENDANTS

SING-SHANG, JOHN TOMES

WILL, JOHN F. Director,  
U.S. MARINE CORPS RECRUITMENT  
DIVISION.

8/20

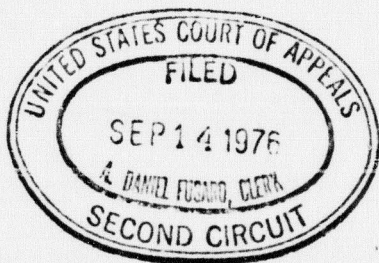
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CAUSE

ATTORNEYS

Linda Atlas Esq.  
15 Court St., Bklyn, NY 11241  
875-7831



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	JUL 14 1976		77070		CARD DATE MAILED

Chang Is Miller 76 Civ 0025

DATE	NR.	PROCEEDINGS
7-14-76		Fld Compl't & Tce Summs
7-15-76		Fld Pltff's OSC for enj. rel. from learning Airtel ... with a stay..ret 7-17-76-10:30 am 306...Ward,J
8-17-76		Fld Govt's affdvt in opposition to pltff's OSC
8-17-76		Fld Govt's Memo in opposition to pltff OSC to enj.
8-19-76		Fld Pltff's Memo insupport of its motion for Declaratory Judg.
8-19-76		Fld Memo End on bk of motion fld 7-15-76-Motion for a prel inj denied., the stay heretofore granted is vacated and the action is dismissed in accordance with the oral dec. rendered in open court on this date. It is so Ordered...Ward,J mm
8-20-76		Fld Pltff's Notice of Appeal to USCA from order of 8-19-76—copy mm on 8-23-76 to: US Atty Off NYC

A TRUE COPY  
RAYMOND W. BURGHARDT, CLERK  
BY A. E. Thompson  
Deputy Clerk

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JUAN TOMAS DIAZ-CHANG,

Plaintiff,

- against -

MAURICE F. KILEY, District Director,  
U.S. IMMIGRATION AND NATURALIZATION  
SERVICE,

Defendant

70 Civ. 3125 RTW  
ORDER TO SHOW CAUSE

WITH STAY

A21 073 820 TU-SB

Upon reading and filing the annexed application of LINDA ATLAS, ESQ., the attorney for the above named plaintiff, dated the 14th day of July 1976, the copy of the action which is on file with this Court and upon all proceedings heretofore had and good cause being shown, it is hereby

ORDERED, that the defendant show cause at the United States

Courthouse, Foley Square, New York, New York in Room 506 on

AUGUST 17, 1976 at 10:30 A.M. in the forenoon or as soon thereafter as

counsel may be heard why the application should not be granted enjoining the defendant from deporting the plaintiff, JUAN TOMAS DIAZ-CHANG from the United States and pending the hearing and the determination of this application, it is further

ORDERED, that the defendant be, and hereby is temporarily stayed from deporting the said JUAN TOMAS DIAZ-CHANG, from the United States pending the hearing and determination of this motion, and it is further

ORDERED, that personal service of a copy of this order upon the United States Attorney for the Southern District of New York, or his representative on or before 5:00 P.M., on July 15, 1976, be good and sufficient service upon the defendant.

Robert J. Ward  
U.S.D.J.

Dated: New York, New York



UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X  
JUAN TOMAS DIAZ-CHANG

Plaintiff,

- against -

MAURICE F. KILEY, District Director,  
Immigration and Naturalization Service,

Defendant  
-----X

ATTORNEY'S  
AFFIDAVIT

STATE OF NEW YORK )

ss.:

COUNTY OF KINGS )

LINDA ATLAS, being an Attorney duly admitted to practice law  
in the State of New York, swears that the following statements are true  
under the penalties of perjury:

That your affiant represents the above captioned plaintiff with  
respect to the within action and is familiar with the facts pertaining  
thereto, as related to your affiant by the plaintiff.

That the plaintiff has made a Motion to Reopen Deportation  
Proceeding, dated April 20, 1976, which is now pending before the  
Immigration and Naturalization Service, at 20 West Broadway, New York.

That the original hearing which resulted in the order of deporta-  
tion against him took place one day after he was served with an order to  
show cause, contrary to the provision of 8 C.F.R. 242.1 which specifies,  
"The order will call upon the respondent to appear before a sp-  
inquiry officer for a hearing at a time and place stated in the order,



not less than seven days, after the service of such order." (Emphasis added). Plaintiff did not waive the right he had to more extended notice as provided for on the order to show cause.

That the plaintiff was denied fundamental procedural due process which resulted in his inability to adequately consult with his lawyer and his inability to raise appropriate Fourth Amendment claims regarding the search in which he was arrested.

That such claims were raised by another respondent arrested in the same search, named Eric Barnett, who was not submitted to an immediate deportation hearing. These claims are being duly adjudicated at the administrative level.

That counsel for plaintiff made a demand upon the District Director for copies of any statements made by plaintiff and a copy of the warrant issued to search the premises where plaintiff was arrested.

That the District Director required additional forms to be filled out and returned. Such forms were duly returned. Counsel for plaintiff has to date received no response from The District Director.

That the plaintiff was unable to introduce the above facts at the original hearing which resulted in the order of deportation against him. Pursuant to 8 C.F.R. 1035 the motion to reopen should therefore be granted.



That in order for the Immigration and Naturalization Service to consider the plaintiff's pending motion, he would have to be present in the United States.

*after 9*  
That this action is being brought on by an order to show cause because the plaintiff is under an order of deportation to take effect July 15, 1976.

That no previous application for the relief sought herein has been made to any court or any judge thereof.

WHEREFORE your deponent prays that a stay of deportation be granted until such time as there is an adjudication of this matter, ~~in its administrative stage~~

\_\_\_\_\_  
LINDA ATLAS

Sworn to before me this

\_\_\_\_ day of July, 1956  
*CU*



NOTICE TO RESPONDENT

ANY STATEMENT YOU MAKE MAY BE USED AGAINST YOU IN DEPORTATION PROCEEDINGS  
THE COPY OF THIS ORDER SERVED UPON YOU IS EVIDENCE OF YOUR ALIEN REGISTRATION  
WHILE YOU ARE UNDER DEPORTATION PROCEEDINGS. THE LAW REQUIRES THAT IT BE  
CARRIED WITH YOU AT ALL TIMES

If you so choose, you may be represented in this proceeding at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Immigration and Naturalization Service. You should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you should bring the original and certified translation thereof. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Charge Cause and that you are deportable on the charges set forth therein. You will have an opportunity to present evidence on your own behalf, to the receipt of evidence and to cross examine any witnesses presented by the Government. Failure to attend the hearing at the time and place designated hereon may result in a determination being made by the Immigration Judge in your absence.

You will be advised by the Immigration Judge, before whom you appear, of any relief from deportation, including the privilege of departing voluntarily, for which you may appear eligible. You will be given a reasonable opportunity to make any such application to the Immigration Judge.

NOTICE OF CUSTODY DETERMINATION

Pursuant to the authority of Part 242.2, Title 8, Code of Federal Regulations, the authorized officer has determined that pending a final determination of deportability in your case, and, in the event you are ordered deported, until your departure from the United States is effected, but not to exceed six months from the date of the final order of deportation under administrative processes, or from the date of the final order of the court, if judicial review is had, you shall be:

☐ Detained in the custody of this Service.

☐ Released on recognizance.

☒ Released under bond in the amount of \$ 1000

You may request the Immigration Judge to redetermine this decision.

REQUEST FOR PROMPT HEARING

To expedite determination of my case, I request an immediate hearing, and waive any right I may have to more extended notice.

☐ I do ☐ do not request a redetermination by an Immigration Judge of the custody decision.

Before:

\_\_\_\_\_  
(signature of respondent)

\_\_\_\_\_  
(signature and title of witnessing officer)

\_\_\_\_\_  
(date)

CERTIFICATE OF SERVICE

Served by me at \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_ at \_\_\_\_\_ m.

\_\_\_\_\_  
(signature and title of employee or officer)



UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

ORDER TO APPEAR AND SHOW CAUSE FOR DEPORTATION AND REMOVAL FROM THE UNITED STATES

In Deportation Proceedings Pursuant to Section 1 of the Immigration and Nationality Act

UNITED STATES OF AMERICA

FILE NO. A71 073 920

In the Matter of DIAZ-CHANG, Juan Tomas

Respondent

Address: (person), Street, City, State, and ZIP Code

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that

1. You are not a citizen or national of the United States.
2. You are a native of Ecuador and a citizen of Ecuador.
3. You entered the United States at Miami, Florida on about 4/1/71 (date).
4. At the time you were admitted as a nonimmigrant visitor for pleasure.
5. You have been authorized to remain in the United States until 10/15/71.
6. You remained in the United States thereafter without authority.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(2) of the Immigration and Nationality Act, in that, after admission as a nonimmigrant under Sec. 101(a)(15) of said act you have remained in the United States for a longer time than permitted.

WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration Judge of the Immigration and Naturalization Service of the United States Department of Justice at 136 Flushing Avenue, Brooklyn, N.Y.

on February 10, 1976(S) at 1:00 p. m. and show cause why you should not be deported from the United States on the charge(s) set forth above.

WARRANT FOR ARREST OF ALIEN

By virtue of the authority vested in me by the Immigration Law of the United States and the regulations issued pursuant thereto, I have commanded that you be taken into custody for proceedings thereafter in accordance with the applicable provisions of the Immigration Law and regulations, and this order shall serve as a warrant to any Immigration Officer to take you into custody. The conditions of your detention or release are set on the reverse hereof.

Dated February 9, 1976

WILLIAM H. McMANUS  
ASSISTANT DISTRICT ATTORNEY  
FOR INVESTIGATIONS, N.Y.C. N.Y.

(city and state)



UNITED STATES OF AMERICA:

UNITED STATES DEPARTMENT OF JUSTICE  
IMMIGRATION AND NATURALIZATION SERVICE

In the Matter of

DIAZ, ORLANDO, PETITIONER

In Deportation Proceedings Under Section 242  
of the Immigration and Nationality Act

DECISION OF THE  
IMMIGRATION JUDGE

Respondent.

On the basis of respondent's admissions I have determined that he is deportable on the charge(s) of

Admission of alien into the United States in violation of the laws of the United States

and that in lieu of an order of deportation, respondent is granted voluntary departure from the United States on or before

such period of time as may be granted by the district director and

IT IS FURTHER ORDERED that if respondent fails to depart within and as requested, the respondent shall be deported from the United States to  
on the charge(s) contained in the Order to Show Cause.

IT IS FURTHER ORDERED that if the aforementioned country advises the Attorney General that it is unable to accept the respondent and his return, or fails to advise the Attorney General within three months following the date of the respondent's departure from the United States, the respondent shall be

and the decision has been served on respondent.

Witness my hand and seal.

Date: 10/10/70

Place: New York

BEST COPY AVAILABLE



UNITED STATES DEPARTMENT OF JUSTICE  
Immigration and Naturalization Service

ORDER TO SHOW CAUSE (NOTICE OF HEARING AND WARRANT FOR ARREST OF ALIEN)  
In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA

File # 421-471-145

In the Matter of **RAHJETT, Eric**

Respondent

Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of Jamaica and a citizen of Jamaica;
3. You entered the United States at New York, N.Y. on or about 9/27/69 <sup>(date)</sup>;
4. At the time you were admitted as a nonimmigrant visitor for pleasure;
5. You have been authorized to remain in the United States until 10/1/70;
6. You remained in the United States thereafter without authority.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(n)(2) of the Immigration and Nationality Act, in that, after admission as a nonimmigrant under Sec. 101(a)(15) of said act you have remained in the United States for a longer time than permitted.

WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration Judge of the Immigration and Naturalization Service of the United States Department of Justice at 100 Flushing Avenue, Brooklyn, N.Y.

on February 10, 1976 (G) at 1:00 P. m. and show cause why you should not be deported from the United States on the charge(s) set forth above.

WARRANT FOR ARREST OF ALIEN

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I have commanded that you be taken into custody in proceedings thereafter in accordance with the applicable provisions of the immigration laws and regulations, and this order shall serve as a warrant to any Immigration Officer to take you into custody. The conditions for your detention or release are set on the reverse hereof.

Dated.

February 9, 1976

*Henry P. G. [Signature]*  
Immigration and Naturalization Service  
ASSISTANT DISTRICT ATTORNEY  
FOR INVESTIGATIONS, N.Y.

BEST COPY AVAILABLE



TO SERVE YOU MOST EFFICIENTLY

We are replying to your letter with notations on the letter itself. This informal method enables us to respond to you immediately. We trust you will agree that promptness is more important than formality. No record has been made of this correspondence and should you write again concerning the same matter, please return the attached correspondence.

UNITED STATES DEPARTMENT OF JUSTICE  
IMMIGRATION AND NATURALIZATION SERVICE

LINDA ATLAS

ATTORNEY AT LAW

15 COURT STREET

SUITE 1003

BROOKLYN, NEW YORK 11241

(212) 875-7831

1016 APR 21 PM 2:55

GPO 954-929

April 16, 1976

Office of the District Director  
Immigration & Naturalization Service  
20 West Broadway  
New York, N. Y. 10007

Dear Sir:

I represent Raul Ignacio, Badillo-Chavez, A No. A 21 073 835, Juan Tomas, Diaz-Chang, A No. 21 073 820, Alfredo Iturralde, A. No. 21 073 836, in their immigration proceedings.

Pursuant to the Freedom of Information Act, I request copies of any statements made by my clients to employees of the Immigration and Naturalization Service.

I also request a copy of the search warrant which was issued for the search of the premises known as Lundv's restaurant, Ocean and Emmons Avenue, Brooklyn, N. Y., which search resulted in the arrest of my clients.

Very truly yours,

*Linda Atlas*

LINDA ATLAS

LA:ak

4/26/76

Forms G-657 (3) attached, and G-28's...

HTB/Lepo.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JUAN TOMAS DIAZ-CHANG,

Plaintiff,

- against -

MAURICE F. KILEY, District Director,  
U.S. IMMIGRATION AND NATURALIZATION  
SERVICE,

Defendant  
-----X

ACTION FOR DECLARA-  
TORY JUDGMENT

Plaintiff, by his attorney respectfully alleges:

1. This is an action for a declaratory judgment under 28 U.S.C. 2201 and 5 U.S.C. 702.

2. Plaintiff seeks review of the denial of an application for a stay of deportation made on July 1, 1976, (Exhibit A).

3. Plaintiff filed on April 20, 1976, a Motion to Reopen Deportation Proceeding, a copy of said motion is attached hereto as (Exhibit B).

4. That a determination by the Immigration Judge has not yet been made on the Motion to Reopen.

5. That in seeking a declaratory judgment pursuant to 5 U.S.C. sec. 702 of the Administrative Procedure Act, the additional facts are hereby stated:

6. That the pending motion is not sufficient to stay the order of deportation now in effect against Plaintiff.

7. That in order for the Immigration and Naturalization Service to consider the pending motion, the plaintiff would have to be present in the United States.

8. That the constitutional right of the plaintiff under the Fourth and Fifth amendments have been violated in the search, arrest, interrogation and subsequent deportation hearing had.

9. That such action on the part of the Immigration and Naturalization Service should result in any evidence obtained against Plaintiff being suppressed, U.S. v. Karathanos, decided February 2, 1976 by the U.S. Court of Appeals for the Second Circuit.


WHEREFORE the Plaintiff prays:

(a) for a review of the denial of his application for a stay of his deportation by the District Director and

(b) for an order restraining the Defendant from enforcing his departure from the United States, pending the final determination of this action and

(c) for such other and further relief as may be appropriate.

DATED: Brooklyn, New York  
July 13, 1976

  
LINDA ATLAS, ESQ.  
Attorney for Plaintiff  
16 Court Street  
Brooklyn, New York, 11241



U.S. DEPARTMENT OF JUSTICE  
IMMIGRATION AND NATURALIZATION SERVICE  
20 WEST BROADWAY  
NEW YORK, N.Y.

A21 073 820 DE/JC

June 30, 1976

Juan Tomas DIAZ-CHANG  
1203 Ave. J, Second Floor  
Brooklyn, N. Y.

Dear Sir:

Reference is made to the application for a stay of deportation filed by your attorney in your behalf on April 20, 1976.

At a deportation hearing held on February 10, 1976 the attorney who represented you at that time had every opportunity to request any administrative relief that seemed available to you. The records reflect there was no mention made of illegal search and seizure. Therefore, your application is denied.

Your motion to reopen deportation proceedings filed in conjunction with the application for a stay of deportation has been forwarded to the Trial Attorney Section for appropriate action; however, the filing of this motion will not stay your deportation. You will be further notified of your surrender date for deportation to Ecuador.

Very truly yours,

*Maurice F. Kiley*

MAURICE F. KILEY  
DISTRICT DIRECTOR  
NEW YORK DISTRICT

CC: Linda Atlas, Esq.  
16 Court St.  
Brooklyn, N. Y.



IMMIGRATION & NATURALIZATION SERVICE  
20 WEST BROADWAY, NEW YORK, NEW YORK

---

In the matter of

DIAZ-CHANG, Juan Tomas

File No. A21 073 820

Respondent

---

MOTION TO REOPEN DEPORTATION PROCEEDING  
WITH STAY OF DEPORTATION

---

Respondent, through his undersigned counsel respectfully  
alleges:

That on February 10, 1976, a hearing did take place before  
an Immigration Judge wherein coluntary departure was granted on  
March 26, 1976.

That contrary to S.C.F.R. Section 242.1 (b), respondent  
was served with an order to sgow cause why he should not be deported  
on February 9, 1976, and the deportation hearing was had on the  
following day.

That the fact that the respondent had only one day to prepare  
his defense worked to his disadvantage to such an extent as to deny  
him fundamental due process as to the deportation hearing for the  
following reasons:

1. The respondent was arrested and taken into custody of the  
Immigration and Naturalization Service pursuant to a search based on  
a warrant which failed to meet the requirements of the Fourth  
Ammendment in several respects.



On information and belief, the warrant failed to particularize and describe the persons who were the subjects of the search. The warrant also failed to allege the commission of Federal crime, required under the applicable statute and regulations. On information and belief, the search made pursuant to said warrant covered not only the premises described, but the surrounding geographical area. At least one person was arrested one block from the premises described in the warrant by an Immigration & Naturalization Service investigator posing as a taxi driver. The search in question was, in fact, a "dragnet" search impermissible under the Fourth Amendment. It has been held that aliens may not be subject to unreasonable searches and seizures as prohibited by the Fourth Amendment, Abel v. U.S.A. 362 U.S., 217 (1960). The penalty for such a search by the government is the inadmissibility of any evidence uncovered by such a search. The principle has been recently been upheld by the U.S. Court of Appeals for the Second Circuit in U.S. v. Karathanos, decided February 2, 1976. In that case a defective warrant resulted in the evidence obtained being subject to the Fourth Amendment exclusionary rule. Thus, the respondent had the right to move for suppression of any evidence that was obtained against him as a result of the search which resulted in his arrest.

2. That the interrogation of the respondent which resulted in statements used against him at his deportation hearing was made in violation of his Fourth and Fifth Amendment rights in the following respects:

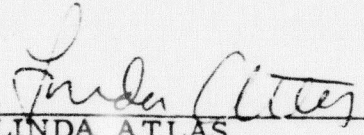
The respondent was taken into custody as a result of an invalid search. The respondent was questioned without benefit of counsel. The respondent was offered "consideration" if he would provide a list of other persons in whom the Immigration and Naturalization Service might have an interest.



The respondent had the right to move for the suppression of such statements, but did not have the opportunity to do so, due to the inadequate time allowed for his defense at his deportation hearing.

That the evidence to be offered is material to the validity of the deportation order made at the respondent's hearing. That it could not have been discovered or presented at the original hearing due to the extremely short time period interim the issuance of the order to show cause and the hearing. Under the provisions of 8 C.F.R. Sections 242.22 and 103.5, the instant motion should be granted in order that the respondent may be given a hearing in accordance with the standards of due process under the Administrative Procedure Act, and be permitted to move to suppress any evidence obtained in violation of his rights under the U.S. Constitution and laws.

WHEREFORE, it is most respectfully prayed that the deportation proceeding in respect to voluntary departure of February 10, 1976, be reopened to allow respondent's counsel to introduce new evidence in support of the allegations made in the instant motion. It is further prayed that the respondent's deportation be stayed pending the administrative determination of the instant motion to reopen the deportation proceeding.

  
LINDA ATLAS  
Counsel for Respondent  
16 Court Street  
Brooklyn, N.Y. 11241

Dated: Brooklyn, New York  
April 16, 1976.



UNITED STATES DEPARTMENT OF JUSTICE  
Immigration and Naturalization Service

ORDER TO SHOW CAUSE, NOTICE OF HEARING, AND WARRANT FOR

DETENTION (Proceedings under Section 241(a)(2) of the Immigration and Nat

UNITED STATES OF AMERICA

IN N. A21

JOSE MANUEL DIAZ-CRANE, Juan Tomas

At the time of your admission to the United States, you were admitted as a nonimmigrant visitor

from Ecuador, and you were admitted to the United States on or about

April 1, 1976, at Miami, Florida.

At the time you were admitted as a nonimmigrant visitor

you were admitted to the United States on or about

April 1, 1976, at Miami, Florida.

At the time you were admitted as a nonimmigrant visitor

you were admitted to the United States on or about

April 1, 1976, at Miami, Florida.

At the time you were admitted as a nonimmigrant visitor

you were admitted to the United States on or about

April 1, 1976, at Miami, Florida.

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April 1, 1976, at Miami, Florida.

At the time you were admitted as a nonimmigrant visitor

you were admitted to the United States on or about

April 1, 1976, at Miami, Florida.

At the time you were admitted as a nonimmigrant visitor

you were admitted to the United States on or about

April 1, 1976, at Miami, Florida.

APPEAR WITH PASSPORT AND  
IMMIGRATION DOCUMENTS

Section 241(a)(2) of the Immigration  
Nationality Act, in that, after admission as a  
nonimmigrant visitor, 101(a)(1)(B) of said  
you were admitted to the United States for a  
period of time then admitted.

WHEREFORE, YOU ARE ORDERED to appear for hearing before the United  
States District Court, Southern District of New York, at  
130 Flushing Avenue, Brooklyn, N.Y.

February 10, 1976 (S) at 1:00 p.m. and show cause why  
you should not be deported to the country of origin.

WARRANT FOR ARREST OF ALIEN

The value of the information stated in this warrant is the Immigration laws of the United States  
and it is hereby commanded that you be taken into custody for  
production of the same and for the purpose of the immigration laws of the United States and  
the warrant is hereby issued to the United States District Court, Southern District of New York, at  
130 Flushing Avenue, Brooklyn, N.Y.

February 9, 1976

BEST COPY AVAILABLE

Assistant District  
Attorney



UNITED STATES OF AMERICA:

File No. A 21 073 820

UNITED STATES DEPARTMENT OF JUSTICE  
IMMIGRATION AND NATURALIZATION SERVICE

In the Matter of

DIAZ CHANG, JUAN TOMAS

Respondent

In Deportation Proceedings Under Sec. 242  
of the Immigration and Nationality Act

DECISION OF THE  
IMMIGRATION JUDGE

Upon the basis of respondent's admissions I have determined that he is deportable on the charge in the Order to Show Cause.

Respondent has made application solely for voluntary departure in lieu of deportation.

ORDER: It is ordered that in lieu of an order of deportation, respondent is granted voluntary departure without expense to the Government on or before March 15, 1976.

or any extension beyond such date as may be granted by the district director and under such conditions as the district director shall direct.

IT IS FURTHER ORDERED that if respondent fails to depart and as required, the time for voluntary departure shall be withdrawn without further notice or proof. As of the following order shall thereupon become immediately effective, respondent shall be deported from the United States to \_\_\_\_\_ on the charge contained in the Order to Show Cause.

IT IS FURTHER ORDERED that if the aforementioned country advises the Attorney General that it is unwilling to accept the respondent into its territory or fails to advise the Attorney General within three months following original inquiry whether it will or will not accept respondent into its territory, respondent shall be deported to \_\_\_\_\_.

Copy of this decision has been served on respondent.

Appeal: Waived-reserved.

Date Feb 10 1976

Place NYC

BEST COPY AVAILABLE



UNITED STATES DEPARTMENT OF JUSTICE  
Immigration and Naturalization Service  
20 West Broadway, New York, N. Y. 10007

File No. A21 073 520TU-S3  
Date: 7/1/76

JUAN TOMAS DIAZ-CHANG  
1203 AVENUE J ESC. FLE.  
BROOKLYN, NEW YORK

As you know, following a hearing in your case you were found deportable and the hearing officer has entered an order of deportation. A review of your file indicates there is no administrative relief which may be extended to you, and it is now incumbent upon this Service to enforce your departure from the United States.

Arrangements have been made for your departure to ECUADOR on  
(country)

\_\_\_\_\_ from NEW YORK, N. Y. on the  
(date) (port of departure)

BY TRANSPORTATION WHICH HAS BEEN ARRANGED

(name of vessel, airline, or other transportation)

You should report to a United States Immigration Officer at Room 5th flr.  
NAVY YARD 136 FLUSHING AVE. BLDG. 300 BROOKLYN, NEW YORK 11251 (No.)  
~~XXXXXXXXXXXXXXXXXXXX~~ at 9 AM JULY 15, 1976  
(address) (hour and date)

completely ready for deportation. At the time of your departure from  
NEW YORK, N. Y. you will be limited to 44 pounds of baggage.  
(place of surrender)

Should you have personal effects in excess of this amount you must immedi-  
ately contact Transportation Officer at 212 264-5979 or  
(name of officer) (phone no. and ext.)

call in person at the address noted above, and appropriate disposition of your  
excess baggage will be discussed with you.

SR/PH LINDA ATLAS, ESQ.  
16 COURT STREET  
BROOKLYN, NEW YORK 11241

Form I-166  
(Rev. 4-1-69)

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Very truly yours,

*Harold J. Grace*  
HAROLD J. GRACE

ASSISTANT DISTRICT DIRECTOR  
FOR DEPORTATION

GPO 673-570

EXHIBIT C



STATE OF NEW YORK )  
COUNTY OF KINGS ) ss.:

EDWARD DOLL, being duly sworn, deposes and says:

1. I am the cashier of Lundy's Restaurant, located at Ocean and Emmons Avenues, Brooklyn, New York. On the evening of January 19, 1976 I was in charge of operations at the restaurant. I make this affidavit in support of the within motion.

2. I have read paragraph numbered one of the Affidavit For A Search Warrant signed by Agent D.J. Pappas on February 3, 1976. I did speak with Mr. Pappas on January 19, 1976 at approximately 4:30 P.M. Mr. Pappas was accompanied by a number of employees of the Immigration and Naturalization Service. I believe there were twelve employees in all. I asked Mr. Pappas to tell me who he was looking for and indicated I would cooperate to bring him anyone named. He responded that he wanted "the whole kitchen". He was not able to be more specific, and could give the names of no individuals sought at that time.

I explained that it would not be possible to empty the entire kitchen because we were preparing for the diner hour. Mr. Pappas did talk with approximately ten employees on the floor of the restaurant. I believe he arrested five employees at that time.

4. I have also read paragraph numbered seven of the Affidavit For A Search Warrant. In that paragraph five individuals are named who, according to a hand written amendment, were said to be "illegally within the United States". None of these names were given to me by Mr. Pappas when he came to make the arrests of January 19, 1976. Apparently, this information was gained from a post-arrest statement made to Mr. Pappas.

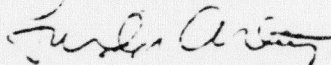
EXHIBIT D



5. On Sunday, February 8, 1976, approximately fifty employees of the Immigration and Naturalization Service surrounded the restaurant, entered, and searched the premises pursuant to the search warrant obtained on the basis of Mr. Pappas' affidavit. The entire restaurant and offices were searched and forty-five persons were arrested. To my knowledge at least four lawful permanent residents were arrested on the charge of being in the United States illegally. They were Mail Felix, Cyril Murray, E. Ayiala and Clinton Walker.

  
EDWARD DOLL

Sworn to before me this  
1st day of June, 1976



LINDA ATLAS  
NOTARY PUBLIC, State of New York  
No. 24-4610577  
Qualified in Kings County  
Cert. Filed in New York County  
Commission Expires March 30, 1977.



UNITED STATES IMMIGRATION  
AND NATURALIZATION SERVICE  
NEW YORK, NEW YORK

-----x  
In the matter of the :  
Deportation Proceedings of :  
ERIC BARNETT : AFFIDAVIT  
A21 073 825 :  
-----x

State of New York )  
 ) ss.:  
County of New York)

CYRIL MURRAY, being duly sworn, deposes and says:

1. I am an employee of Lundy Brothers Restaurant, 1901 Emmons Avenue, Brooklyn, New York.
2. I am a lawful permanent resident alien. I have resided in the United States since August, 1968. My alien registration number is A-18-089-624.
3. I reside at 183-5 Sullivan Street, New York, New York.
4. On February 8, 1976 I was standing in the dining room of Lundy's Restaurant. I saw three or four men rush through the door. One came to me, hitting me in the chest, and asking: "Where is the basement? Where is the basement?"
5. I told him I didn't know where the basement is. I pointed him to the manager and told him to ask the manager.
6. He continued to hit me in the chest and to ask, "Where is the basement?"

EXHIBIT F



7. Then, as I saw more men rush into the restaurant, he asked me: "Where is your 'green card'?" I said: "I don't have it with me, but I have my number." I then took a piece of paper out of my wallet and showed him my number. I also told him that if I could call my wife she would bring my card to the restaurant.

8. He said: "No. You can't use the telephone." Then he herded me - and many other employees - to a section of the dining room.

9. Again I asked him to let me call my wife. Again he said "No," and said: "Nobody move, sit right where you are."

10. I shouted to a friend, asking him to call my wife to ask her to bring my 'Green Card.' Another of the men who arrested us told my friend not to use the telephone. He yelled: "Nobody use the telephone."

11. Then I was handcuffed to another man and told to stay where I was.

12. Although there are white people working at Lundy's Restaurant, I did not see the men who rushed into the restaurant interrogate any white people. But, as far as I could see, they asked every non-white person in the restaurant for his or her 'Green Card.'

13 While I was handcuffed I was told by one of the men that we were going down to 20 West Broadway. I asked him



if I could go upstairs to change my clothes from my waiter's uniform into my own clothes. He uncuffed me from the man I was handcuffed to but then cuffed my own hands together.

14. He followed me upstairs and when he opened my locker he searched it, without my permission, and searched my pants pockets. He removed a pocket knife from a pocket.

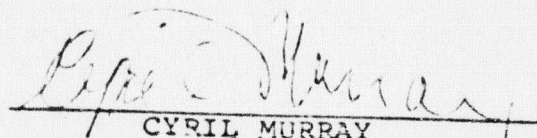
15. We went back downstairs and I was again handcuffed to another employee.

16. We were then placed in a car and driven to 20 West Broadway, New York, New York.

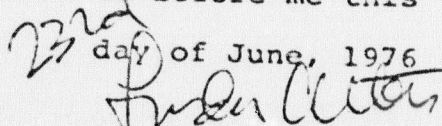
17. About a half hour after I arrived at 20 West Broadway my wife arrived with my Green Card and I was released. When my wife arrived she was asked to show her Green Card.

18. My wife came to 20 West Broadway because she was called by a friend of mine after I was taken from Lundy's,

Signed,

  
CYRIL MURRAY

Sworn to before me this

  
day of June, 1976

LEONDA ATLAS  
NOTARY PUBLIC, State of New York  
No. 26, 111, 112  
NOTARY PUBLIC  
Cert. Filed in New York County  
Commission Expires March 30, 1977

BEST COPY AVAILABLE



STATE OF NEW YORK )  
COUNTY OF KINGS ) ss.:

Mail Felix

being duly sworn, deposes and says:

That I am a legal permanent resident. My alien registration number is A31-422-854

That on February 8, 1976, I was arrested by Agents of the Immigration and Naturalization Service on the premises of Lundy's Restaurant, Ocean and Emmons Avenue, Brooklyn, New York, while in the course of my legal employment.

That I committed no act which would cause me to be arrested by said Agents of the Immigration and Naturalization Service.

Mail Felix

Sworn to before me  
this 2<sup>nd</sup> day of April, 1976.

Linda Atlas  
LINDA ATLAS  
NOTARY PUBLIC, State of New York  
No. 24 4619577  
Qualified in Kings County  
Comm. Exp. in New York County  
Commission Expires March 30, 1977

EXHIBIT F



STATE OF NEW YORK )  
COUNTY OF KINGS ) ss.:

CLINTON WALKER being duly sworn, deposes and says:

That I am a legal permanent resident. My alien registration number is A 34-470-708

That on February 8, 1976, I was arrested by Agents of the Immigration and Naturalization Service on the premises of Lundy's Restaurant, Ocean and Egmonts Avenue, Brooklyn, New York, while in the course of my legal employment.

That I committed no act which would cause me to be arrested by said Agents of the Immigration and Naturalization Service.

CLINTON WALKER

Sworn to before me  
this 30 day of April, 1976.

Linda Atlas

LINDA ATLAS  
NOTARY PUBLIC, State of New York  
No. 244010377  
Qualified in Kings County  
Cert. filed in New York County  
Commission Expires March 20, 1977

EXHIBIT G



THB:ml  
76-2349

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

- - - - - x

JUAN TOMAS DIAZ-CHANG, :

Plaintiff, :

- v -

: 76 Civ. 3125 (RJW)

MAURICE F. KILEY, District Director, :

U.S. IMMIGRATION AND NATURALIZATION  
SERVICE, :

Defendant. :

- - - - - x

DEFENDANT'S MEMORANDUM OF LAW

PRELIMINARY STATEMENT

The plaintiff, Juan Tomas Diaz-Chang, brought on this action for a declaratory judgment in which he seeks to review the denial of an administrative stay of deportation rendered by the District Director of the Immigration and Naturalization Service at New York (the "Service"). The plaintiff now seeks a preliminary injunction staying his deportation pending the final determination of this action.



The defendant District Director opposes the motion for injunctive relief and respectfully requests that this action be dismissed.

STATEMENT OF FACTS

The facts in this case are set forth with particularity in the accompanying affidavit of Thomas H. Belote, Special Assistant United States Attorney, and reference is respectfully made thereto. The facts may be briefly summarized as follows:

The alien-plaintiff, Juan Thomas Diaz-Chang, is a native and citizen of ~~Guatemala~~, who entered the United States on April 1, 1971 as a nonimmigrant visitor for pleasure and was authorized to remain in this country only until October 16, 1976. He failed to depart pursuant to the terms of his nonimmigrant visa and was subsequently apprehended while illegally employed in the United States. At his deportation hearing the alien applied for and was granted the privilege of departing voluntarily from the United States in lieu of enforced deportation. Throughout



THB:ml  
76-2349

those deportation proceedings the alien was represented by legal counsel of his choice.

The plaintiff-alien failed to depart pursuant to the terms of the decision of the Immigration Judge. He now seeks to stay his deportation claiming that his initial apprehension by the Service was in violation of his rights under the Fourth Amendment of the United States Constitution.



ARGUMENT

THE DISTRICT DIRECTOR DID NOT ABUSE  
HIS DISCRETION IN DENYING THE PLAIN-  
TIF'S STAY OF DEPORTATION WHEN UNDER  
THE CIRCUMSTANCES OF THIS CASE NO  
USEFUL PURPOSE WOULD BE SERVED EVEN  
IF THE DEPORTATION PROCEEDINGS WERE  
REOPENED

While plaintiff requests that a preliminary injunction should issue, the sole issue in this case is whether the District Director abused his discretion in denying the alien's application for a stay of deportation. Since as defendant will demonstrate, the alien's motion to reopen was clearly without merit and the filing of such a motion does not stay his deportation, in any event, there was no abuse of discretion in the District Director's denial, and there are no grounds warranting the granting of a preliminary injunction.

- A. The Immigration Judge did not abuse his discretionary authority in declining to reopen the deportation proceedings.

The Immigration and Nationality Act contains no specific provision for the reopening of a deportation



proceeding. The Attorney General, under his broad grant of authority to administer and enforce the Act, Section 103(a) of the Act, 8 U.S.C. §1103(a), has promulgated regulations which permit reopening as a matter of discretion provided certain criteria are met. The applicable regulation, 8 C.F.R. §242.22, provides in pertinent part that motions to reopen "will not be granted unless the Special Inquiry Officer is satisfied that evidence sought to be offered is material and was not available and could not have been discovered or presented at the hearing". Additionally, 8 C.F.R. §103.5 provides that "motions to reopen shall state the new facts to be proved at the reopened hearing and shall be supported by affidavits and other evidentiary material". See also 8 C.F.R. §3.8.

Clearly, the regulations contemplate that a motion to reopen contain an offer of evidence, that the evidence be heretofore unobtainable, and that the evidence be sufficient to warrant the grant of relief sought. Accordingly, the Immigration Judge is required to evaluate any such offer of evidence against the background of the



record already compiled in the alien's case. Where such evidence, even if accepted as true, would not justify a grant of ultimate relief sought, it is obvious that no purpose would be served by reopening the proceeding. See Cheng Kai F. v. Immigration and Naturalization Service, 386 F.2d 750, 753 (2d Cir. 1967), cert. denied 390 U.S. 10003 (1968); Acededo v. Immigration and Naturalization Service, Slip. Op. Docket No. 75-4246 (2d Cir. decided April 29, 1976).

In his motion to reopen, the alien attempts to assert the invalidity of his deportation proceedings claiming that the evidence introduced there should be suppressed as a result of the Service's allegedly illegal search and seizure of the alien at the place of his illegal employment. However, at plaintiff's February 10, 1976 deportation hearing before an Immigration Judge, at which the alien was represented by privately retained and experienced counsel, no mention was made as to any deprivation of the alien's Fourth Amendment rights. The introduction of this novel claim at this late stage in the



proceedings is just another manifestation of the alien's dilatory tactics in order to evade his lawful deportation and breach his prior commitment to the United States Government. It is clear that even if the alien could have made a good faith showing of a constitutional violation he voluntarily waived that ground at the deportation hearing.

Furthermore, even assuming, arguendo, that the arrest was illegal, the deportation proceedings would not thereby be rendered invalid, and thus a reopening of the proceedings would be unnecessary and unwarranted. The plaintiff's argument would have validity only if it were established that the evidence underlying the deportation order was itself obtained in violation of law. It is well-settled that irregularities in the arrest alone do not vitiate the deportation order. This general rule has long been recognized by the Supreme Court, and has been repeatedly upheld by the courts in cases involving deportation proceedings. Frisbie v. Collins, 342 U.S.



519 (1952); Bilokumsky v. Ted, 263 U.S. 149 (1923); Ker v. Illinois, 119 U.S. 436 (1886); LaFranca v. Immigration and Naturalization Service, 413 F.2d 686 (2d Cir. 1969); Guzman-Flores v. Immigration and Naturalization Service, 496 F.2d 1245 (7th Cir. 1974); Shu Fuk Cheung v. Immigration and Naturalization Service, 476 F.2d 1180 (8th Cir. 1973); Vlissidis v. Anadell, 262 F.2d 398 (7th Cir. 1959).

At his February 10, 1976 deportation hearing, the alien, represented by counsel, conceded his alienage and deportability as charged in the order to show cause. Thus, the order for the plaintiff's deportation resulted from his own admissions while he was represented by counsel, and the issue of illegality of his arrest is rendered moot. In a recent Second Circuit decision, in which the alien similarly admitted that he was an alien illegally in the United States, the Court said,

"Assuming, arguendo, that petitioner's arrest was technically defective, it does not follow that the deportation proceedings were thereby



rendered null and void. This argument was rejected by the Supreme Court many years ago. United States ex rel. Bilokumsky v. Tod.... We have followed Bilokumsky, as have the courts of other circuits.... Regardless of the legality of his arrest, since petitioner's deportation hearing testimony, standing alone, was sufficient to support the order of deportation, his petition for reversal of such order and dismissal and termination of the deportation proceedings should be denied."

Miguel Avilas-Gallegos v. Immigration and Naturalization Service, 525 F.2d 666 (2d Cir. 1975) (attached).

If the rule were otherwise, aliens in the plaintiff's position could permanently immunize themselves from deportation by showing that their initial apprehension by an immigration officer was defective. Arbiol v. Immigration and Naturalization Service, 73 Civ. 344 (U.S.D.C. S.D.N.Y. March 6, 1973) (Frankel, J.). No such absurd result is required or contemplated by the Act or the Constitution. Thus, having failed to establish that his deportation hearing would be declared invalid as a result of his newly-conceived claims of alleged



violation of his Fourth Amendment rights, petitioner has not carried his burden of proof that the Immigration Judge abused his discretion by declining to reopen the deportation proceedings.

B. The District Director did not abuse his discretion in denying the alien's application for a stay of deportation.

Once a final order of deportation has been entered, the grant or denial of an application for a stay of deportation is committed entirely to the discretion of the District Director. 8 C.F.R. §243.4. The scope of review of the District Director's decision to deny a stay of deportation is extremely narrow and unless that decision is found to be without any rational basis or depart inexplicably from established practice this Court should not substitute its judgment for that of the District Director. See Bolanos v. Kiley, 509 F.2d 1023 (2d Cir. 1975); Wong Wing Hang v. Immigration and Naturalization Service, 360 F.2d 715, 719 (2d Cir. 1966). In view of the alien's immigration history, the District Director



clearly did not abuse his discretion in denying this form of discretionary relief. The alien's immigration history reflects a purposeful pattern of delay in order to prolong his illegal sojourn in the United States. From his initial entry as a nonimmigrant visitor for pleasure in April, 1971, to his subsequent illegal overstay and employment contrary to the conditions of his visa, to the breach of his agreement with the defendant and consequent filing of unmeritorious petitions, applications, and actions, the alien has exhibited a complete disregard of the immigration laws and a unique display of bad faith. See United States ex rel. Lee Pao Fen v. Esperdy, 423 F.2d 6 (2d Cir. 1970).

In addition, the granting of a stay of deportation in this case would be unwarranted since plaintiff's claims of constitutional violations are demonstrably insufficient to invalidate his deportation proceedings. See Avila Galegos, supra. Thus, since the deportation proceedings will not be reopened and no declaration of the invalidity of those proceedings will be forthcoming, the District Director properly exercised his discretion



in denying plaintiff's application for a stay, which under these circumstances, would accomplish no purpose, other than to reward the alien for his dilatory maneuvers.

C. Plaintiff is not entitled to a preliminary injunction.

A preliminary injunction is an extraordinary equitable remedy, the application for which is addressed to the sound discretion of the trial court. Berrigan v. Norton, 451 F.2d 790, 793 (2d Cir. 1971); Briones v. Kiley, F. Supp. (S.D.N.Y. 1976) (attached). In order to establish his right to a preliminary injunction, a party must demonstrate, among other things, a strong likelihood of ultimate success on the merits, and that he will be entitled to the relief he seeks. Brown v. Chote, 411 U.S. 452, 456 (1973); Columbia Pictures Industries v. AEG, 501 F.2d 894 (2d Cir. 1974). Thus, in this case where plaintiff is complaining of the failure to grant him discretionary relief, he must demonstrate to the Court that the defendant either abused or failed to exercise his discretion, and that he is entitled to the relief he seeks.



As demonstrated above, plaintiff has failed in all respects to establish any abuse of discretion in these proceedings. Not merely failing to establish that he merits such discretionary relief, the alien has positively proven himself unworthy of this equitable remedy. Thus, the alien has failed to demonstrate that the District Director abused his discretion, that he would win on the merits of his Fourth Amendment claim, and that he is entitled to discretionary relief. Under these circumstances there are no grounds for granting preliminary relief.

CONCLUSION

Plaintiff's motion for a preliminary injunction should be denied and the underlying complaint dismissed forthwith.

Respectfully submitted,

ROBERT B. FISKE, Jr.,  
United States Attorney for the  
Southern District of New York,  
Attorney for Defendant.

THOMAS H. BELOTE,  
Special Assistant United States Attorney,  
Of Counsel.



UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

No. 196—September Term, 1974.  
(Argued September 29, 1975 Decided November 7, 1975.)  
Docket No. 74-2647

MIGUEL AVILAS-GALLEGOS,

*Petitioner,*

v.

IMMIGRATION AND NATURALIZATION SERVICE,

*Respondent.*

Before:

LUMBARD, ANDERSON and VAN GRAAFEHLAND,

*Circuit Judges.*

Petition for review of a final order of deportation entered by the Board of Immigration Appeals.  
Petition denied.

WILLIAM H. OLTARSH, Esq., New York, N. Y. for  
*Petitioner.*

THOMAS H. BELOTE, Esq., New York, N. Y.  
Special Assistant United States Attorney  
(Paul J. Curran, Esq., United States Attorney for the Southern District of New York;  
Steven J. Glassman, Esq., Assistant United States Attorney, of counsel), for *Respondent.*

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VAN GRAAFEILAND, Circuit Judge:

On October 8, 1973, petitioner, a native of Ecuador, entered the United States from Mexico without an immigrant visa or other valid entry document. This is a petition to review an order of the Board of Immigration Appeals that he be deported.

Since petitioner himself testified before the Immigration Judge concerning the illegal manner of his entry, one might well ask, "Why the appeal?" The answer here, as in so many other cases, is an alleged violation of petitioner's constitutional rights.<sup>1</sup> He contends that his arrest was illegal because it was without warrant or probable cause and that he failed to receive proper *Miranda* warnings. Arguing from this premise, he concludes that all testimony at the deportation hearing should have been suppressed and the case against him dismissed. We agree with neither the premise nor the conclusion.

The facts surrounding petitioner's apprehension are uncomplicated. INS officials, in response to a complaint from the New York State Department of Labor, called upon petitioner's employer to inquire into the employment of illegally admitted aliens. After reviewing personnel records, the officers interviewed petitioner and several of his co-workers in the presence of factory officials. During this interview, petitioner admitted that he was an alien illegally in the United States. Upon his subsequent inability to produce a passport, he was taken to the Immigration Office where *Miranda* warnings were given and a written statement secured. The deportation hearing followed.

Since deportation proceedings are not criminal in nature, *Woodby v. Immigration and Naturalization Service*, 385 U.S. 276, 285 (1966), there was no necessity for *Miranda*

<sup>1</sup> We also note that this appeal has gained petitioner almost one year's reprieve from deportation.



warnings. *Chavez-Raya v. Immigration and Naturalization Service*, 519 F.2d 397 (7th Cir. 1975). In any event these warnings would not have been required prior to the time they were given because, until then, petitioner was not in custody or under any restraint. *Nason v. Immigration and Naturalization Service*, 370 F.2d 865, 868 (2d Cir. 1967).

Our recent decision in *Ojeda-Vinales v. Immigration and Naturalization Service*. — F.2d — (2d Cir. Sept. 23, 1975), slip op. 6183, is four-square authority that petitioner's arrest was not illegal.<sup>2</sup> Here, as in *Ojeda-Vinales*, the information originally received by INS justified the initiation of an investigation, and "petitioner's own voluntary responses to the agent's questions provided the extra measure of evidence needed to establish probable cause for his arrest." *Id.* at 6186. Here, also, the likelihood of petitioner's escape justified his apprehension without a warrant.<sup>3</sup>

Assuming, *arguendo*, that petitioner's arrest was technically defective, it does not follow that the deportation proceedings were thereby rendered null and void. This argument was rejected by the Supreme Court many years ago. *United States ex rel. Bilokumsky v. Tod*, 263 U.S. 149,

2 Petitioner was arrested under authority of 8 U.S.C. § 1357(a)(2) which provides:

Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant— . . . to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any [immigration] law or regulation and is likely to escape before a warrant can be obtained for his arrest, but the alien arrested shall be taken without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States.

3 Prior to his arrest, petitioner admitted to the INS officers that he had been "caught" twice in California after his illegal entry. From this, the officers could reasonably infer that he had in some way escaped and was likely to do so again. See *La Franca v. Immigration and Naturalization Service*, 415 F.2d 686, 689 (2d Cir. 1969).



158 (1923). We have followed *E. Williams*, as have the courts of other circuits. *S. J. F. v. Immigration and Naturalization Service*, 412 F.2d 689 (2d Cir. 1969); *Flissidis v. Anadell*, 262 F.2d 759 (7th Cir. 1959); *Huerta-Cabrera v. Immigration and Naturalization Service*, 466 F.2d 759 (7th Cir. 1972) (per curiam); *Guzman-Flores v. Immigration and Naturalization Service*, 496 F.2d 1245 (7th Cir. 1974).

Regardless of the legality of his arrest, since petitioner's deportation hearing testimony, standing alone, was sufficient to support the order of deportation, his petition for reversal of such order and dismissal and termination of the deportation proceedings should be denied. *Medeiros v. Brownell*, 240 F.2d 634 (D.C. Cir. 1957) (per curiam); *Shing Hang Tsui v. Immigration and Naturalization Service*, 389 F.2d 994 (7th Cir. 1968) (per curiam). Cf. *United States ex rel. Pantano v. Corsi*, 65 F.2d 322, 323 (2d Cir. 1933).  
Petition denied.

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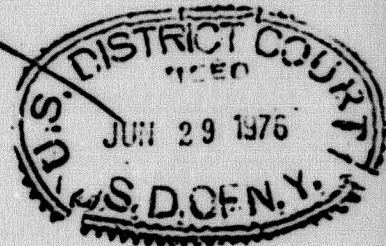
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
GASTON BRIONES and CECILIA BRIONES, :

Plaintiffs, : 76 Civ. 1147 (CMT)

-against- :

MAURICE F. KILEY, District Director :  
for the New York District, Immigra- :  
tion and Naturalization Service, :  
United States Department of Justice, :

Defendant. :

-----X

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MEMORANDUM

TENNEY, J.

Plaintiffs Cecilia and Gaston Briones seek an order of this Court granting a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure. For the reasons set forth below, the motion is denied.

Facts

Plaintiffs are both natives and citizens of Chile. Plaintiff Gaston Briones entered the United States on September 27, 1969, as a nonimmigrant visitor for pleasure with an authorized stay until November 27, 1969. Mr. Briones stayed beyond this date and was ordered to appear at the office of the Immigration and Naturalization Service ("the Service"), but changed his employment and absconded. Plaintiff Cecilia Briones entered this country on January 31, 1970, with an authorized stay



until June 30, 1970. She sought and obtained an extension of her departure date until December 30, 1970. In the interim, on March 20, 1970, plaintiffs were married. Mrs. Briones also stayed beyond her authorized departure date.

On February 26, 1971, plaintiffs submitted a request for political asylum to the New York District Office of the Service. This request was denied on February 28, 1972, and plaintiffs were given the privilege of voluntary departure, which they declined. Deportation proceedings were instituted on February 28, 1972, against both plaintiffs and a hearing was held on May 3, 1972. Plaintiffs, represented by counsel at the hearing, conceded their deportability and requested voluntary departure. The privilege of voluntary departure was granted until September 3, 1972, with the proviso that if plaintiffs failed to depart voluntarily they would be deported to Spain, or in the alternative to Chile. The plaintiffs waived appeal and the orders became final.

On September 1, 1972, plaintiffs sought an extension of their voluntary departure date to December 3, 1972, based on the need of Mrs. Briones' employer for her services, but this request was denied on September 5, 1972. Notwithstanding the denial, plaintiffs' counsel was advised at that time that if plaintiffs presented confirmed departure tickets for on or before September 20, they could preserve their privilege of voluntary departure. Plaintiffs did not so depart and on



November 6, 1972, warrants of deportation were issued and plaintiffs were advised of their imminent deportation.

On December 8, 1972, plaintiffs sought to stay the orders of deportation based on the fact that Mrs. Briones was then pregnant. This request was granted and the orders of deportation were stayed until January 11, 1973. Plaintiffs were also advised that if they were prepared to depart by that date, then consideration would be given to a request for restoration of voluntary departure. On January 10, 1973, plaintiffs submitted a further request for a one month extension of the stay of deportation. There is no record of the disposition of this request. In the interim, however, Mrs. Briones received a Department of Labor certification, necessary in order to obtain a visa, and both plaintiffs obtained a priority date of October 10, 1972, on the Western Hemisphere visa waiting list. Then, on June 4, 1973, Mrs. Briones gave birth to a daughter who is a United States citizen.

Plaintiffs next submitted a motion, on September 21, 1973, to reopen their deportation proceedings and to stay deportation to allow them to present a claim based on their fear of persecution if forced to return to Chile. The matter was referred to the State Department by the Service for comment. The State Department advised against the grant of the claim and the Service concurred. The plaintiffs were so advised on April



24, 1974. On May 6, 1974, the decision of the Immigration Judge was rendered denying the plaintiffs' motion to reopen, but once again granting the privilege of voluntary departure to May 20, 1974. Plaintiffs failed to depart by May 20.

Rather, in the intervening period, on May 14, plaintiffs' counsel filed a request for an extension of the departure date, but the request was denied and by notice dated June 18, 1974, plaintiffs were ordered to surrender for deportation on July 8, 1974.

On July 8, 1974, plaintiffs filed an action in this Court. The action was dismissed by stipulation since the issues raised therein were the same as an action already pending in this Court entitled Noel v. Green, namely, whether aliens (similarly situated to these plaintiffs) should be permitted to remain in the United States until their priority date for visa issuance became current. The Noel action had been commenced in this Court on August 24, 1973. On February 8, 1974, a preliminary injunction application was denied in the Noel case and an appeal was filed. The denial of the preliminary injunction was affirmed by the United States Court of Appeals for the Second Circuit on January 4, 1975, and certiorari was denied by the United States Supreme Court on October 6, 1975. It had been the understanding of both the plaintiffs and the Service that they would be bound by the outcome in the Noel



litigation. Deportation had been stayed pending the conclusion of the Noel litigation.

During the pendency of the petition for certiorari in the Noel litigation, plaintiffs were notified that they had been scheduled for a visa appointment in Santiago, Chile. At this point the plaintiffs were in something of a bind. On the one hand they no longer had the privilege of voluntary departure available to them. On the other hand, if they left under an order of deportation, they would be denied visas as excludable aliens unless they first secured the express permission of the Attorney General of the United States to return. As a result of this situation, plaintiffs, on April 7, 1975, sought a restoration of voluntary departure. This request was initially denied by the District Director of the Service and was referred to an Immigration Judge for a hearing. The hearing took place on April 18, and on April 21, 1975, the motion to reopen was denied. An appeal was taken to the Board of Immigration Appeals, but was dismissed. No further appeal was taken.

Subsequent to the denial of certiorari in Noel, plaintiffs were notified to surrender for deportation on February 10, 1976. On February 4, 1976, plaintiffs filed an application for a thirty day stay of deportation and once again requested a reinstatement of the privilege of voluntary departure. The stay was granted, but the reinstatement was denied. This action



followed on March 10, 1976 seeking a declaratory judgment that the District Director of the Service had abused his discretion (or failed to exercise it) in denying the plaintiffs' application for a restoration of the privilege of voluntary departure. On that date a temporary restraining order was entered restraining defendant from taking the plaintiffs into custody or deporting them pending the determination of their motion for a preliminary injunction.

#### Preliminary Injunction

A preliminary injunction has repeatedly been recognized in this circuit as an extraordinary remedy. See Gulf & Western Industries, Inc. v. The Great Atlantic and Pacific Tea Company, Inc., 476 F.2d 687, 692 (2d Cir. 1973); Checker Motors Corp. v. Chrysler Corp., 405 F.2d 319 (2d Cir.), cert. denied, 394 U.S. 899 (1969). Application for this remedy is addressed to the discretion of the district court. Yakus v. United States, 321 U.S. 414, 440 (1944); 7 Moore's Federal Practice ¶ 65.04[2].

The standard for issuance of a preliminary injunction was enunciated by the Second Circuit as follows:

"The standard factors which the court now considers upon an application for a preliminary injunction are well known: (1) clear likelihood of success on the law and the facts then available and possible irreparable injury, or (2) sufficiently serious questions on the merits making them fair ground for litigation and a balance of the equities tipping decidedly in



favor of preliminary relief." Columbia Pictures Industries, Inc. v. American Broadcasting Companies, Inc., 501 F.2d 694, 697 (2d Cir. 1974).

See also San Filippo v. United Brotherhood of Carpenters and Joiners of America, No. 75-7394, at 6392-93 (2d Cir., Oct. 28, 1975); Sonesta International Hotels Corp. v. Wellington Associates, 483 F.2d 247, 250 (2d Cir. 1973); Gulf & Western Industries, Inc. v. The Great Atlantic and Pacific Tea Company, supra, 476 F.2d at 692-93; Dino De Laurentiis Cinematografica, S.p.A. v. D-150, Inc., 366 F.2d 373, 375 (2d Cir. 1966).

Thus, the issue before the Court is whether the plaintiffs have met their burden of showing either satisfaction of the "clear likelihood" test or the "serious questions" test. This, of course, begs the question of whether the defendant District Director abused his discretion in denying the plaintiffs' request for reinstatement of voluntary departure.

Section 244(e) of the Immigration and Nationality Act, 8 U.S.C. § 1254(e) provides in pertinent part with regard to voluntary departure:

"The Attorney General may, in his discretion, permit any alien under deportation proceedings ... to depart voluntarily from the United States at his own expense in lieu of deportation if such alien shall establish to the satisfaction of the Attorney General that he is, and has been, a person of good moral character for at least five years immediately preceding his application for voluntary departure under this subsection."

The regulations promulgated pursuant to statute allow the



District Director to extend or reinstate the privilege. 8  
C.F.R. § 244.2.

The District Director's denial is subject to the test of abuse of discretion, Bolanos v. Kiley, 509 F.2d 1023 (2d Cir. 1975), and the scope of review in this Court is extremely narrow. Muskardin v. Immigration and Naturalization Service, 415 F.2d 865 (2d Cir. 1969). In reviewing a discretionary decision, the Court would only find an abuse if it were to find that the decision "were made without a ration explanation, [or that it] inexplicably departed from established policies, or rested on an impermissible basis...." Wong Wing Hang v. Immigration and Naturalization Service, 360 F.2d 715, 719 (2d Cir. 1966). A permissible basis for the decision is the absence of good faith or the use of dilatory tactics on the part of the alien. Lan Tat Sin v. Esperdy, 227 F. Supp. 482 (S.D.N.Y.), aff'd, 334 F.2d 999 (2d Cir.), cert. denied, 379 U.S. 901 (1964). See also Bolanos v. Kiley, supra, 509 F.2d at 1026.

Defendant, in opposing the application for a preliminary injunction, has stated that "[t]he purposeful pattern found in all of plaintiffs' applications and motions may be summed up in one word--delay." (Affidavit of Mary P. Maguire, sworn to March 30, 1976, at ¶ 20). With this conclusion, the Court must agree. While the plaintiffs attempt to justify their defalcations (and an individual link in the chain here and there may be justified adequately) the overall picture is of a tenacious



attempt to remain in this country through the use of every inventive tactic available. The District Director denied the reinstatement of voluntary departure to plaintiffs because they had not availed themselves of the privilege when it had been granted on two occasions previously. It is the conclusion of this Court, based on the detailed recitation of the facts herein and the law stated above, that there was no abuse of discretion. Having reached this conclusion, the Court finds that the plaintiffs have failed to meet their burden of showing either a clear likelihood of success or that they have raised serious questions going to the merits.

Accordingly, the plaintiffs' motion for a preliminary injunction is denied.

So ordered.

Dated: New York, New York

June 29, 1976

CHARLES H. TENNEY

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U.S.D.J.

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DISTRICT COURT  
UNITED STATES ~~COURT OF APPEALS~~  
FOR THE ~~SOUTHERN DISTRICT~~  
SOUTHERN DISTRICT OF N.Y.  
-----x

JUAN TOMAS DIAZ-CHANG, :

Plaintiff, :

- v -

MAURICE F. KILEY, District  
Director, U.S. IMMIGRATION  
AND NATURALIZATION SERVICE, :

Defendant. :

-----x

STATE OF NEW YORK :  
COUNTY OF NEW YORK : SS.:

THOMAS H. BELOTE, being duly sworn, deposes  
and says:

1. I am a Special Assistant United States Attorney in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, and as such I am in charge of this case. I submit this affidavit in opposition to plaintiff's order to show cause for a writ of deportation. This affidavit is based upon the administrative file of the Immigration and Naturalization Service (the "Service") relating to the plaintiff, Juan Tomas Diaz-Chang ("Diaz-Chang").

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2. Diaz-Chang is a forty-five year old native and citizen of Ecuador who entered the United States on



April 1, 1971 as a nonimmigrant visitor for pleasure and who was authorized to remain in this country only until October 16, 1971. He failed to depart at the expiration of his authorized visitation and has been illegally employed in this country in violation of the terms of his nonimmigrant visa (Exhibit A).

3. On February 8, 1976 Service investigators, pursuant to a search warrant issued in the United States Court for the Eastern District of New York, apprehended Diaz-Chang while illegally employed in Brooklyn, New York.

4. On February 9, 1976 the Service commenced deportation proceedings against Diaz-Chang with the issuance of an order to show cause and notice of hearing charging that he was deportable under Section 241(a)(2) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. §1251(a)(2) for having overstayed his legal visitation. The deportation hearing was scheduled for February 10, 1976 by reason of the alien's request for a prompt hearing (Exhibit B).

5. On February 10, 1976 Diaz-Chang appeared for a deportation hearing before Immigration Judge Martin J. Travers. During these proceedings the alien was represented by privately retained and experienced counsel (Exhibit C). During that hearing the alien conceded his alienage and deportability as charged in the order to show



cause. Contrary to the assertion made by plaintiff's counsel in her affidavit dated July 14, 1976, the February 10th hearing was not contrary to the provisions of 8 C.F.R. §242.1. A copy of the original order to show cause Exhibit B) reflects that the alien chose to expedite his proceedings. The plaintiff in his papers to this Court has erroneously presented to this Court as evidence only a copy of the original order to show cause. As a matter of procedure, an order to show cause, Immigration and Naturalization Service Form I-221, consists of an original and two copies. The original which notes service of process and requests a prompt hearing remains in the Record of Proceedings in a deportation case (Exhibit B). One copy of the order is given to the alien and the other copy remains in the nonrecord portion of the alien's administrative file. Only the original order to show cause which is presented to the Immigration Judge and contained in the record of proceedings is signed by the alien when he waives the seven-day notice and requests a prompt hearing.

6. Prior to the hearing before Judge Travers the alien, by his counsel, and the Service Trial Attorney had reached a mutual settlement on the disposition of these immigration proceedings. In accordance with that agreement the Immigration Judge granted the alien the discretionary privilege of voluntary departure under 8 C.F.R.



\$244 in lieu of deportation, provided that Diaz-Chang effect that departure within forty-five days of the decision. Judge Travers entered an alternative order of enforced deportation in the event that the alien should not effect his voluntary departure as represented at the hearing. The alien voluntarily waived his right to appeal that decision to the Board of Immigration Appeals and accordingly the decision became final (Exhibit D).

7. Thereafter, Diaz-Chang obtained his present attorney who registered her appearance with the Service on May 14, 1976.

8. The alien failed to abide by his agreement to voluntarily depart from the United States by March 26, 1976. In complete disregard of his agreement with the Government, as well as the discretionary privilege accorded him by Judge Travers, he has continued his illegal residence in this country.

9. Accordingly, on March 29, 1976 pursuant to the alternative order of Judge Travers the Service issued a warrant for the alien's deportation.

10. In an obvious effort to frustrate deportation on March 31, 1976 the alien filed a petition for review pursuant to Section 106 of the Act, 8 U.S.C. §1105a in the Court of Appeals for the Second Circuit.



By reason of the automatic statutory stay provision of 8 U.S.C. §1105a(n)(3) Diaz-Chang thereby blocked the Government's attempt to enforce his departure. Furthermore, the filing of that petition was totally without merit inasmuch as the alien, by voluntarily waiving his right to appeal Judge Travers' decision to the Board of Immigration Appeals, had failed to exhaust his available administrative remedies. Therefore the jurisdictional prerequisites of 8 U.S.C. §1105a(c) had not been satisfied. Nonetheless Diaz-Chang was thereby able to frustrate his immediate deportation.

11. On April 23, 1976 the alien proceeded to further block his removal from the United States by submitting an administrative application for a stay of deportation to the Service's District Director and a motion to reopen to an Immigration Judge.

12. On April 27, 1976 after a preargument conference before the Staff Counsel for the Court of Appeals and after having orchestrated the above administrative applications to delay his deportation the alien withdrew the petition for review (Exhibit E).

13. On June 30, 1976 the Service's District Director denied the alien's application for a stay of deportation (Exhibit F), and notified him to surrender for deportation on July 15, 1976 (Exhibit G).



14. On July 14, 1976 the alien filed this action to stay his deportation.

15. On August 3, 1976 Immigration Judge William B. Curock denied the alien's attempt to further delay his deportation by refusing to reopen the deportation proceedings (Exhibit F).

16. It is respectfully submitted that the alien-plaintiff in this action is merely attempting another dilatory maneuver in order to frustrate the administrative deportation proceedings against him. It is quite clear from his immigration record that he has and will continue to disregard the immigration laws and will continue in bad faith to breach any commitments he makes with the Government.

17. It is also clear that the plaintiff-alien has failed to demonstrate that a preliminary injunction should issue in this action. The filing of a motion to reopen his deportation proceedings does not stay his deportation and the District Director's decision denying an administrative stay of deportation is quite clearly not an abuse of discretion. As noted in the defendant's memorandum of law this alien's motion to reopen is completely without merit and the District Director's decision was clearly warranted in this case.



TED:ml  
76-2349

WHEREFORE, it is prayed that the plaintiff's request for a preliminary injunction be denied and that the underlying complaint be dismissed.

---

THOMAS R. BELCOTE

Sworn to before me this

17 day of August, 1976.

LYNWOOD HAYES  
Notary Public, State of New York  
No. 41-1720825  
Qualified in Queens County  
Cert. filed in New York County  
Commission Expires March 30, 1977



AVISO DE DERECHOS

No. 121023020

Antes de que le hagamos cualquier pregunta, usted debe de comprender sus derechos:

Usted tiene el derecho de guardar silencio.

Cualquier cosa que usted diga puede ser usada en su contra en un proceso de leyes, en un procedimiento administrativo o de inmigración.

Usted tiene el derecho de hablar con un abogado para obtener asesoramiento antes de contestar cualquier pregunta, y de tenerlo presente con usted durante el interrogatorio.

Si usted no puede pagar un abogado, se le proporcionará uno antes de cualquier pregunta, si usted lo desea.

Si usted decide contestar nuestras preguntas ahora, sin tener a un abogado presente, siempre tendrá usted el derecho de dejar de contestar cuando guste. Usted también tiene el derecho de dejar de contestar cuando guste, hasta que pueda hablar con un abogado.

RENUNCIA

He leído esta declaración de mis derechos y comprendo lo que son mis derechos. Estoy dispuesto a dar una declaración y a contestar preguntas. Por ahora no deseo un abogado. Comprendo y sé lo que estoy haciendo. No me han hecho promesas ni me han amenazado, ni han usado presión o fuerza en mi contra.

Firma

Fecha y hora: 4/8/76 3PM

Lugar:

30 West Blaney NYC

CERTIFICATION

I HEREBY CERTIFY that the foregoing Warning and Waiver were read by me to the above signatory, that he also read it and has affixed his signature hereto in my presence,

Signature of Immigration Officer

Witness' Signature

Interpreter's Signature

Language

Interpreter's Address

INTERVIEW LOG

1. Person interviewed \_\_\_\_\_
2. Officer(s) \_\_\_\_\_
3. Place (exact address and identity of room) \_\_\_\_\_
4. Date \_\_\_\_\_
5. Exact Time place of encounter or arrest \_\_\_\_\_
6. If transported from place of encounter to interrogation point, show exact time involved. \_\_\_\_\_  
Note whether interrogation continued during transporting \_\_\_\_\_
7. Officers making arrest and/or transporting subject \_\_\_\_\_
8. Time interview began \_\_\_\_\_
9. Time subject or suspect advised of right to remain silent and fact any statement could be used against him in court and name of officer furnishing advice \_\_\_\_\_
10. Time subject advised of right to presence of counsel, retained or appointed and name of officer furnishing advice \_\_\_\_\_
11. Time questioning concluded \_\_\_\_\_
12. Time written statement commenced \_\_\_\_\_
13. Person preparing statement \_\_\_\_\_
14. Time statement completed \_\_\_\_\_
15. Time statement reviewed by person interviewed \_\_\_\_\_
16. Time statement signed \_\_\_\_\_
17. Record of requests and complaints of subject and actions taken thereon \_\_\_\_\_

(If additional space required, continue on an attachment.)

BEST COPY AVAILABLE



## RECORD OF SWORN STATEMENT IN AFFIDAVIT FORM

## AFFIDAVIT

NAME: DIAZ-CHANG, JUAN TOMASFILE NO. 15073520

EXAMINED AT

DATE FEB. 8, 1976

Before the following officer of the U.S. Immigration and Naturalization Service:

LAURENCE GRANELLIin the SPANISH language. Interpreter NONE used.1. JUAN TOMAS DIAZ-CHANG

acknowledge that the above-named officer has identified himself to me as an officer of the United States Immigration and Naturalization Service, authorized by law to administer oaths and take testimony in connection with the enforcement of the Immigration and Nationality laws of the United States. He has informed me that he desires to take my sworn statement regarding: MY ENTRY INTO THE UNITED STATES AND MY EMPLOYMENT IN THE UNITED STATES.

He has told me that my statement must be freely and voluntarily given and has advised me of these rights:

"You have the right to remain silent.

Anything you say can be used against you in court, or in any immigration or administrative proceeding.

You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.

If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer."

I am willing to make a statement without anyone else being present. I swear that I will tell the truth, the whole truth, and nothing but the truth, so help me, God.

Being duly sworn, I make the following statement: My true and correct name is JUAN TOMAS DIAZ-CHANG. I WAS BORN IN COLIMES, ECUADOR ON THE 18<sup>th</sup> OF SEPTEMBER, 1930. I LAST ENTERED THE UNITED STATES AT MIAMI AS A VISITOR ON APRIL 1, 1971 AND WAS GIVEN 15 DAYS TO VISIT. I THEN RECEIVED A SIX MONTH EXTENSION OF MY TIME IN NEW YORK CITY. I BEGAN WORKING FOR LUNDY'S RESTAURANT IN BROOKLYN IN APRIL OF 1971. A FRIEND OF MINE WHO ALREADY WORKED THERE ARRANGED FOR ME TO GET A JOB THERE AS A DISHWASHER. I WORK ABOUT SIXTY-NINE HOURS PER WEEK AS A DISHWASHER. I AM PAID \$150. PER WEEK. EACH SUNDAY NIGHT, ONE OF THE BOSSES GIVES ME A WHITE SLIP WHICH SAYS 'I AM TO BE PAID \$150. I GIVE THE SLIP TO A CASHIER WHO PAYS ME THE MONEY. LUNDY'S TAKES OUT TAXES AND SOCIAL SECURITY FROM MY PAY, BUT I DO NOT KNOW HOW MUCH EACH WEEK. EACH YEAR I RECEIVE A PAPER THAT TELLS ME HOW MUCH TAX MONEY WAS TAKEN OUT. I DO NOT REMEMBER HOW MUCH IT WAS FOR THE LAST FEW YEARS.

Juan Diaz



UNITED STATES DEPARTMENT OF JUSTICE  
Immigration and Naturalization Service

No.

ORDER TO SHOW CAUSE, NOTICE OF HEARING, AND WARRANT FOR ARREST OF ALIEN

In Deportation Proceedings under Section 14 of the Immigration and Nationality Act

UNITED STATES OF AMERICA

File No. A21 073 820

In the Matter of DIAZ-CHANG, Juan Tomas

Respondent

Address (present): Street, City, State, and ZIP Code

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that

1. You are not a citizen or national of the United States.
2. You are a native of Ecuador and a citizen of Ecuador
3. You entered the United States at Miami, Florida on or about 4/1/71
4. At the time you were admitted as a nonimmigrant visitor for pleasure.
5. You have been authorized to remain in the United States until 10/16/71
6. You remained in the United States thereafter without authority.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(2) of the Immigration and Nationality Act, in that, after admission as a nonimmigrant under Sec. 101(a)(15) of said act you have remained in the United States for a longer time than permitted.

WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration Judge of the Immigration and Naturalization Service of the United States Department of Justice at 136 Flushing Avenue, Brooklyn, N.Y.

on February 10, 1976(S) at 1:00 p.m. and show cause why you should not be deported from the United States on the charge(s) set forth above.



WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration Judge of Immigration and Naturalization Service of the United States Department of Justice at  
136 Flushing Avenue, Brooklyn, N.Y.

on February 10, 1976(S) at 1:00 p. in and show cause why you should not be deported from the United States on the charge(s) set forth above.

WARRANT FOR ARREST OF ALIEN

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I have commanded that you be taken into custody for proceedings thereafter in accordance with the applicable provisions of the immigration laws and regulations, and this order shall serve as a warrant to any Immigration Officer to take you into custody. The conditions for your detention or release are set on the reverse hereof.

Dated February 9, 1976

*William J. Strawn*  
ASSISTANT DISTRICT ATTORNEY  
FOR INVESTIGATIONS, NY  
(City and State)

Form I-2218 (12-1-73)

(over)

FILE NO. A21073820

DATE 8/6/76

I have compared this document with the original thereof and certify that it is a true copy.

*William J. Strawn T.A.*



FILE NO. A21 073 820

DATE 8/6/76

I have examined this document with the  
original and certify that it is  
a true copy.

William Shaver T.A.

#### NOTICE TO RESPONDENT

ANY STATEMENT YOU MAKE MAY BE USED AGAINST YOU IN DEPORTATION PROCEEDINGS  
THE COPY OF THIS ORDER SERVED UPON YOU IS EVIDENCE OF YOUR ALIEN REGISTRATION  
WHILE YOU ARE UNDER DEPORTATION PROCEEDINGS. THE LAW REQUIRES THAT IT BE  
CARRIED WITH YOU AT ALL TIMES

If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Immigration and Naturalization Service. You should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you should bring the original and certified translation thereof. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Order to Show Cause and that you are deportable on the charges set forth therein. You will have an opportunity to present evidence on your own behalf, to the receipt of evidence and to cross examine any witnesses presented by the Government. Failure to attend the hearing at the time and place designated hereon may result in a determination being made by the Immigration Judge in your absence.

You will be advised by the Immigration Judge, before whom you appear, of any relief from deportation, including the privilege of departing voluntarily, for which you may appear eligible. You will be given a reasonable opportunity to make any such application to the Immigration Judge.

#### NOTICE OF CUSTODY DETERMINATION

Pursuant to the authority of Part 242.2, Title 8, Code of Federal Regulations, the authorized officer has determined that pending a final determination of deportability in your case, and, in the event you are ordered deported, until your departure from the United States is effected, but not to exceed six months from the date of the final order of deportation under administrative processes, or from the date of the final order of the Court, if judicial review is had, you shall be

☐ Detained in the custody of this Service.

☐ Released on recognizance.

☒ Released under bond in the amount of \$ 1000

You may request the Immigration Judge to redetermine this decision.

REQUEST FOR PROMPT HEARING



☐ Detained in the custody of this Service.

☐ Released on recognizance.

☒ Released under bond in the amount of \$ 1000

request the Immigration Judge to redetermine this decision.

REQUEST FOR PROMPT HEARING

In determination of my case, I request an immediate hearing, and waive any right I may have to more notice.

☐ do ☒ do not request a redetermination by an Immigration Judge of the custody decision.

(Signature and title of witnessing officer)

(Signature of respondent)

(date)

CERTIFICATE OF SERVICE

Served by me at

101st Ave.

on 2/14/76

1976 at 2:50 p.m.

**BEST COPY AVAILABLE**

(Signature and title of employee or officer)



UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

MATTER OF

FILE A- 21 073 820

JUAN TOMAS DIAZ-CHANG

IN DEPORTATION PROCEEDINGS

-Respondent-

TRANSCRIPT OF HEARING

Before: Martin J. Tamm, Immigration Judge

Date: February 10, 1976 Place: Brooklyn Detention Facility

Transcribed by Gwynne MacPherson Recorded by Cassette

Official Interpreter \_\_\_\_\_

Language Spanish

APPEARANCES:

For the Service:

William J. Lyons, Esq.

New York, NY 10007

Signature

For the Respondent:

Julian L. Deane, Esq.

110 Broadway

New York, NY 10005

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1 IMMIGRATION JUDGE TO RESPONDENT (Through Official Interpreter)

2 Q What is your name?

3 A Juan Tomas Diaz-Chang.

4 Q What language do you speak best?

5 A Spanish.

6 Q Is Mr. Bezozo your attorney?

7 A Yes.

8 Q Mr. Steven Bezozo.

9 IMMIGRATION JUDGE: Now Mr. Bezozo, have you had a chance to discuss this  
10 case with the Trial Attorney?

11 MR. BEZOZO: Yes I have sir.

12 IMMIGRATION JUDGE: And have you reached an agreement?

13 MR. BEZOZO: Yes, the same as the previous case, 45 days voluntary departure.

14 IMMIGRATION JUDGE: Is that agreeable with you Mr. Meyers?

15 MR. MEYERS: That's the government's position, yes.

16 IMMIGRATION JUDGE: All right. Mr. Bezozo, on behalf of your client, do  
17 you admit service of the Order to Show Cause?

18 MR. BEZOZO: I admit service of the Order to Show Cause and the allegations  
19 in the Order to Show Cause.

20 IMMIGRATION JUDGE: Do you concede truth of the allegations and concede  
21 deportability?

22 MR. BEZOZO: Yes sir.

23 IMMIGRATION JUDGE TO RESPONDENT

24 Q Mr. Diaz-Chang, Mr. Bezozo in your behalf has conceded that you are  
25 deportable from the United States and has asked to be granted the  
26 privilege of voluntary departure. Now, in the event you do not leave the



1 United States and must be deported. What country would you wish to be  
2 deported to?  
3 A To my country, Ecuador.  
4 Q You have no reason to fear returning to Ecuador?  
5 A Yes, I can go.  
6 IMMIGRATION JUDGE: That's a final order?  
7 MR. BEZOZO: Yes sir.  
8 MR. MEYERS: Final order.  
9 IMMIGRATION JUDGE TO RESPONDENT  
10 Q Mr. Diaz-Chang, here's a copy of the order for you, a copy of the order  
11 for Mr. Bezozo, a final order on that.  
12  
13  
14  
15

16 I hereby certify that to the best of my knowledge and  
17 belief the foregoing pages numbered 1 through 2  
18 are a complete and accurate transcript of the above-  
19 mentioned proceedings.  
20  
21  
22  
23  
24  
25

*Harold J. [Signature]*  
*[Signature]*  
[Signature]  
[Signature]

4-  
TRANSCRIPT OF HEARING

United States Department of Justice -- Immigration and Naturalization Service



UNITED STATES OF AMERICA:

UNITED STATES DEPARTMENT OF JUSTICE  
IMMIGRATION AND NATURALIZATION SERVICE

In the Matter of

**DEAZ-CHANG, JUAN TOMAS**

In Deportation Proceedings Under Section 242  
of the Immigration and Nationality Act

**DECISION OF THE  
IMMIGRATION JUDGE**

Respondent.

Upon the basis of respondent's admissions I have determined that he is deportable on the charge(s) in  
Order to Show Cause

Respondent has made application solely for voluntary departure in lieu of deportation

**ORDER.** It is ordered that in lieu of an order of deportation respondent is granted voluntary departure  
without expense to the Government on or before November 26, 1976

extension beyond such date as may be granted by the district director, and under such conditions as the  
district director shall direct.

**IT IS FURTHER ORDERED** that if respondent fails to depart within and as required, the order of  
voluntary departure shall be withdrawn without further notice or proceedings and the following order shall be  
immediately effective: respondent shall be deported from the United States to \_\_\_\_\_  
on the charge(s) contained in the Order to Show Cause

**IT IS FURTHER ORDERED** that if the aforementioned country advises the Attorney General that it is unwilling  
to accept the respondent into its territory or fails to advise the Attorney General within three months following  
original inquiry whether it will or will not accept respondent into its territory, the respondent shall be deported  
to \_\_\_\_\_

A copy of this decision has been served on respondent

Witness my hand and seal

Date Nov 26 1976

Place San Francisco

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76-115-  
mya

United States Court of Appeals  
FOR THE SECOND CIRCUIT

-----x

JUAN THOMAS DIAZ-CHANG,  
Petitioner,

Docket No. 76-4094

- against -

IMMIGRATION & NATURALIZATION  
SERVICE  
Respondent

-----x

The undersigned hereby stipulate that the above petition  
may be dismissed without costs and without attorneys fees and  
with prejudice.

Lucia Ariza



-X-

The undersigned hereby stipulate that the above petition  
<sup>withdrawing</sup>  
may be ~~dismissed~~ without costs and without attorneys fees and  
with prejudice.

Lucas Allen

Attorney for Petitioner

Robert B. Fiske Jr.  
United States Attorney for the  
Southern District of New York

By: Nancy P. Maguire  
Special Assistant U.S. Attorney  
Attorney for

Dated:

SO ORDERED:

A. Daniel Furman  
clerk

Vincent A. Carlini  
chief deputy clerk

July 27, 1976



File No. 121 373 2671-18  
Date: 7/1/76

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Since the report of the station director is a confidential document, it is being furnished to the Board of Inquiry for their information and use only. It is not to be distributed outside of the Board of Inquiry or to any other person or organization.

Enclosed for the Board of Inquiry are the following documents:

Attached to this report is a copy of the testimony of several reports to the Board of Inquiry, on condition that no copy thereof will be made, that it will be retained in the custody and control, and that it will be destroyed upon the termination of the investigation by the Service.

You are advised that the Board of Inquiry Judge entered an order which is final, and that the investigation is being conducted in accordance with the provisions of Section 10 of the Espionage Act, as amended, and the Espionage Regulations.

Very respectfully,  
Special Agent in Charge

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UNITED STATES DEPARTMENT OF JUSTICE  
IMMIGRATION AND NATURALIZATION SERVICE

FILE NO. 101 073 020 - NEW YORK

DATE: AUG 1 1951

IN THE MATTER OF:

DEPORTATION PROCEEDINGS

-against-

DEAS-CHANG, JUAN TORRES

-Respondent-

IN BEHALF OF RESPONDENT:

Marla Atlas, Esq.  
16 Court Street  
Brooklyn, New York 11211

IN BEHALF OF SERVICE:

William Strasser, Esq.  
Trial Attorney  
New York, N.Y. 10007

ORDER ON MOTION TO REOPEN PROCEEDINGS

The Trial Attorney's brief in this case sets forth the facts.

Counsel for this subject at the time of hearing was Julius L. Harozo, a long time practitioner specializing in immigration matters and knowledgeable in the law. He, on behalf of his client, admitted alienage of the respondent and his deportability under the law.

The respondent was informed thereof and chose his native country as the place to which he wished to be deported if deportation became necessary.

The alienage and deportability having been established by confession of his attorney, any question as to possible illegal arrest became moot.

For the above reasons and those stated in the Trial Attorney's brief the motion is denied.

ORDER: IT IS ORDERED that respondent's motion to reopen proceedings, be denied.

*William A. Strasser*

WILLIAM A. STRASSER  
Immigration Judge



UNITED STATES DEPARTMENT OF JUSTICE  
Immigration and Naturalization Service  
20 West Broadway  
New York, New York 10007

July 27, 1976

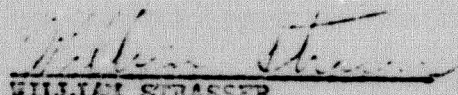
Linda Atlas, Esq.  
16 Court Street  
Brooklyn, New York 11211

Re: DIAZ-CHANG, JUAN TOMAS  
A21 073 820

Dear Madam:

Enclosed is a copy of the Service Brief in Opposition to Motion  
to Reopen in the above entitled matter.

Very truly yours,

  
WILLIAM STRASSER  
TRIAL ATTORNEY  
NEW YORK DISTRICT

Enc.  
WS:gh



UNITED STATES DEPARTMENT OF JUSTICE  
Immigration and Naturalization Service  
20 West Broadway  
New York, New York 10007

-----X  
In the Matter of :  
 :  
DIAZ-CHANG, JUAN TOMAS :  
 :  
RESPONDENT :  
-----X

File Number: A21 073 820

IN DEPORTATION PROCEEDINGS

IN BEHALF OF RESPONDENT:

Linda Atlas, Esq.  
16 Court Street  
Brooklyn, New York 11211

BRIEF IN OPPOSITION TO MOTION TO REOPEN

The motion to reopen is opposed.


The respondent was served with an order to show cause in deportation proceedings on February 9, 1976. The same day the respondent executed a request for a prompt hearing and he was afforded a deportation hearing on February 10, 1976. The respondent was represented at that hearing by an attorney Julius L. Ezzezo, Esq. At that hearing the Immigration Judge found the respondent deportable as charged and entered an order granting him voluntary departure in lieu of deportation providing he departed from the United States on or before March 26, 1976, or any extension beyond such date as might be granted by the District Director. At no time during that hearing did the respondent or his attorney raise any question concerning any possible violation of the Fourth Amendment. No extension of voluntary departure was granted and the respondent through his present attorney filed a petition for review on March 31, 1976, in the United States Court of Appeals for the 2nd Circuit which petition was withdrawn on April 27, 1976. Prior to the withdrawal of the petition for review the respondent filed on April 20, 1976, a request for an administrative stay of deportation pending the outcome of the instant motion to reopen. The District Director denied that request and the respondent was requested to surrender for deportation on July 13, 1976. On July 14, 1976, the respondent filed for a declaratory judgment in the United States District Court for the Southern District of New York and the respondent's surrender has been stayed pending the outcome of that litigation.

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The respondent's actions in these proceedings appear to be dilatory in nature. Neither the respondent nor his previous attorney contested the respondent's deportability..

In view of all of the facts this motion should be denied.

  
\_\_\_\_\_  
WILLIAM STRASSER  
TRIAL ATTORNEY  
NEW YORK DISTRICT

July 27, 1976



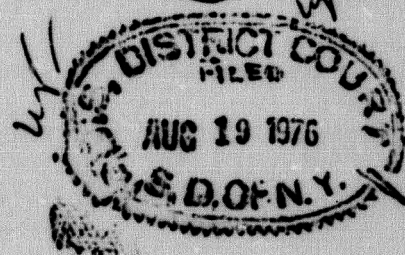
Juan Tomas Diaz-Chang  
v. Maurice F. Kiley  
76 Civ. 3125

Motion for a preliminary injunction denied,  
the stay heretofore granted is vacated and the action  
dismissed in accordance with the oral decision rendered  
in open court on this date.

It is so ordered.

Dated: August 19, 1976

*Robert F. Ward*  
U. S. D. J.



AUG 19 1976



①  
COPY RECEIVED

Robert B. Fiske, Jr.  
UNITED STATES ATTORNEY

10/14/76

Marian L. Bryant